

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re)	Chapter 11
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,)	Case No. 12-12020 (MG)
)	
Debtors.)	Jointly Administered
)	

**DECLARATION OF DAVID S. COHEN IN SUPPORT
OF OBJECTION OF THE NOTES TRUSTEE AND AD
HOC COMMITTEE OF JUNIOR SECURED NOTEHOLDERS
TO CONFIRMATION OF PLAN PROPONENTS' CHAPTER 11 PLAN**

I, DAVID S. COHEN, declare as follows:

1. I am a partner with the firm of Milbank Tweed Hadley & McCloy LLP, counsel for (i) UMB Bank, N.A., as successor Notes Trustee under that certain Indenture dated as of June 6, 2008 for 9.625% Junior Secured Guaranteed Notes due 2015 of Residential Capital, LLC and (ii) the Ad Hoc Committee of Junior Secured Noteholders.

2. Annexed hereto as Exhibit A is a true and correct copy of the Expert Report of Robert S. Bingham, dated October 18, 2013.

3. Annexed hereto as Exhibit B is a true and correct copy of the Expert Report of Michael Fazio, dated October 18, 2013.

4. Annexed hereto as Exhibit C is a true and correct copy of the Expert Report of Raymond T. Lyons, Esq., dated October 18, 2013.

I declare, under penalty of perjury pursuant to 28 U.S.C. §1746, that the foregoing
is true and correct to the best of my knowledge, information, and belief.

Dated: October 22, 2013
New York, New York

/s/ David S. Cohen
David S. Cohen

Exhibit A

Expert Report of Robert S. Bingham, dated October 18, 2013

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>In re:</p> <p>RESIDENTIAL CAPITAL, LLC, <u>et al.</u>,</p> <p>Debtors.</p>	<p>Case No. 12-12020 (MG) Chapter 11</p> <p>Jointly Administered</p>
<p>RESIDENTIAL CAPITAL, LLC, <u>et al.</u>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>UMB BANK, N.A., IN ITS CAPACITY AS INDENTURE TRUSTEE FOR THE 9.625% JUNIOR SECURED GUARANTEED NOTES, <u>et al.</u>,</p> <p>Defendants.</p>	<p>Adv. Case No. 13-01343 (MG)</p>
<p>OFFICIAL COMMITTEE OF UNSECURED CREDITORS, on behalf of the estate of the Debtors,</p> <p>Plaintiffs,</p> <p>v.</p> <p>UMB BANK, N.A., AS SUCCESSOR INDENTURE TRUSTEE UNDER THAT CERTAIN INDENTURE, dated as of June 6, 2008, <u>et al.</u>,</p> <p>Defendants.</p>	<p>Adversary Proceeding No. 13-01277 (MG)</p>

EXPERT REPORT OF ROBERT S. BINGHAM

OCTOBER 18, 2013

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I. PROFESSIONAL QUALIFICATIONS

1. I am a Senior Director with Zolfo Cooper LLC (“Zolfo Cooper”). I have 35 years of experience in a variety of auditing, financial and accounting management and consulting positions. I have provided over 15,000 hours of service as either an officer of or advisor to companies operating, restructuring and/or liquidating in bankruptcy. My experience includes working on several large bankruptcies involving multiple affiliated entities and significant, intercompany claims among the entities. I served as a confirmation hearing witness related to the treatment of intercompany claims in the Enron Corp, Prime Motor Inns, Inc. and The Loewen Group Inc. bankruptcy proceedings. I have also provided financial advisory services in bankruptcy matters including New Stream Secured Capital, Inc., New York Racing Association, Blue Bird, Sunbeam Corporation, and the Washington Group.

2. In August 2011, I issued an expert report in an adversary proceeding (Adv. Pro. No. 2:10-CV-198-MHT) related to the Colonial Bancgroup, Inc. chapter 11 bankruptcy for the Middle District of Alabama Case No. 2:10-cv-00409-MHT-WC (Bankr. Case No. 09-32303 (DHW)). My opinions and observations expressed in that report related to the treatment of intercompany transactions pursuant to a corporate tax sharing agreement.

3. I served on a panel at the 2011 Association of Insolvency and Restructuring Advisors annual conference discussing the treatment of intercompany claims in bankruptcy. I am a Certified Insolvency and Restructuring Advisor. I was also named the 2002 Gold Medal winner for achieving the highest score on the Certified Insolvency and Restructuring Advisor Exam. I began my career in public accounting, serving as an auditor with Ernst & Young for 9 years.

4. My Curriculum Vitae is attached as Exhibit 1, which includes a more detailed summary of my credentials and experience.

II. SCOPE OF SERVICES

5. Zolfo Cooper has provided this report at the request of White & Case LLP and Milbank, Hadley, Tweed, & McCloy LLP as counsel to the Ad Hoc Group of Junior Secured Noteholders (“Ad Hoc Group”) of the 9.625% Junior Secured Guaranteed Notes due 2015 (“JSNs”) and counsel to UMB Bank, N.A. as Trustee for the JSNs (“Notes Trustee”), and also to Akin Gump Strauss Hauer Feld LLP as special litigation counsel to the Trustee relating to the Chapter 11 proceedings of the Debtors in the United States Bankruptcy Court for the Southern District of New York, Case No. 12-12020.

6. No portion of Zolfo Cooper’s compensation is dependent upon the nature of my opinions or on the outcome of this proceeding. In connection with the preparation of this report, Zolfo Cooper is being compensated based on the time incurred providing such services. My hourly billing rate is \$750.00. I have been asked by Counsel to prepare an expert report and provide expert testimony (if necessary) on certain topics and issues related to these Consolidated Adversary Proceedings and the confirmation of the Debtors’ plan of reorganization.

7. Counsel and the Trustee engaged Zolfo Cooper to review and assess the following:

- The Debtors’ use of a centralized cash management system (the “Debtors’ Cash Management System”) in their normal business operations;
- The nature of the transactions that comprise the Debtors’ nine largest intercompany balances as of May 14, 2012 (the “Petition Date”), the date of Debtors’ bankruptcy petitions (the “Nine Largest Petition Date Intercompany Balances”), which comprises \$8 billion of the total \$8.4 billion intercompany balances scheduled by the Debtors; and

- The presentation of the Debtors' intercompany balances as reflected in the Debtors' pre-petition internal accounting records and external reports, including SEC filings, audited financial statements provided to various lenders and used to determine compliance with certain federal and state licensing agency minimum net worth and solvency requirements and federal income tax returns.¹

III. BACKGROUND

8. A review of the Company's books and records reveals that Residential Capital, LLC ("ResCap", the "Company" or the "Debtors"), GMAC Mortgage LLC ("GMACM"), Residential Funding Company, LLC ("RFC") and each of their affiliated debtors (the "Debtors") accounted for the transfer of value between and among affiliates as debt transactions, resulting in corresponding intercompany payables and receivables being recorded in the Company's general ledgers. The intercompany accounts in their general ledgers included titles/account names such as, "Note Receivable," "Intercompany," "Intercompany Receivable," "Intercompany Recvable," "Intercompany Rec," "Intercompany Payable/Recvable," "Interco LOC," "Interco Payable," "Intracompany payable – US Subs" and/or "A/P affiliates." Intercompany balances fluctuated as transactions were recorded into the intercompany accounts. Transactions that were recorded in the Debtors' intercompany accounts are referred to throughout my report as "Intercompany Transactions." Occasionally, intercompany receivables, or portions thereof, were forgiven by the obligee in order to permit the obligor to meet regulatory or loan agreement net worth and solvency requirements applicable to ResCap and certain of its subsidiaries including, but not limited to, GMAC Residential Holding, LLC, RFC, GMACM and Executive Trustee Services ("ETS"). As to relationships between entities that are now Debtors, such forgiveness was infrequent and required the approval of ResCap's Chief Financial Officer

¹ EXAM10362088-90

and/or the Board of Directors or the Executive Committee.² Forgiveness of an intercompany receivable of more than \$50 million also required the approval of the Board of Directors of Ally Financial Inc. (“Ally,” formerly known as GMAC).³

9. Pre-petition note receivables, intercompany receivables and intercompany payables among ResCap, GMACM, RFC and their affiliates arose from a variety of types of transactions. As discussed in more detail throughout my report and specifically explained in the Ally/ResCap Accounting Policy for Intercompany Accounting effective on January 1, 2011 and November 28, 2011,⁴ it appears that the balances in the note receivables, note payables, intercompany receivables and intercompany payables fluctuate primarily as a result of the following types of transactions:

- Functioning of the centralized cash management system - with the recipient of cash recording an intercompany payable to the transferor and the transferor recording an intercompany receivable from the recipient;⁵
- Loans from one entity to another - generating an intercompany note or accounts payable on the books of the borrower and an intercompany note or accounts receivable on the books of the lender;⁶
- Charges for services provided by affiliates - creating an intercompany liability on the books of the service beneficiary to the service provider and intercompany receivable from the beneficiary on the books of the service provider for the value of the services provided. For example, the general ledger data provided by the Debtors includes certain intercompany transactions that are described as relating

² Transcript of the Deposition of Barbara Westman, dated October 15, 2013 (“Westman Dep. Tr.”) at 219:12-21.

³ Hamzehpour Ex. 1 (EXAM10362088) at EXAM10362089.

⁴ RC40000118-37, Ally/ResCap Accounting Policy 1040, Intercompany Accounting, effective January 1, 2011; and RCJSNII10131858-78, Ally/ResCap General Intercompany Accounting Policy, effective November 28, 2011.

⁵ See, e.g., Westman Ex. 2 (RCJSNII10041452), Sept. 10, 2011 Email from Barbara Westman.

⁶ See, e.g., Westman Ex. 19 (EXAM00107037), ResCap Restated Loan Agreement. Moreover, the intercompany balances were considered as assets or liabilities for the purposes of evaluating solvency. See Dondzila Tr. at 19:13-22; 22:21-23; 23:3-9.

to “Service Fee Accruals”, “IT and Marketing Cross Charge” and “OPEX Allocation”;⁷

- Accrual of interest on certain intercompany loans - generating an intercompany accounts payable on the books of the borrower and an intercompany accounts receivable on the books of the lender;⁸
- Payments against intercompany notes payable or accrued intercompany interest payable, which reduced the intercompany assets on the books of the lender and the intercompany liabilities on the books of the borrower;⁹
- Transfers or sales of assets - creating an intercompany receivable from the transferee on the books of the transferor and an intercompany payable to the transferor on the books of the transferee for the value of the assets transferred;¹⁰ and
- Occasional forgiveness of intercompany obligations - resulting in a reduction of the intercompany note or account payable on the books of the obligor and a reduction in the intercompany note or account receivable on the books of the beneficiary.¹¹

IV. SUMMARY OF OPINIONS

10. My opinions are based on my review and analysis of the information and documents identified in the attached Exhibit 2.

11. The Debtors consistently treated intercompany obligations as valid liabilities. Those liabilities arose from accurately recorded transactions entered into in the normal course of business. The liabilities were included in the Debtors’ financial statements, which were prepared in accordance with the Generally Accepted Accounting Principles (“GAAP”). Accordingly, the Debtors assessed the obligors’ ability to satisfy these intercompany

⁷ RCUCCJSN00012497-575, General ledger account # 2020100001, account name GMAC RESI Intercompany.

⁸ See, e.g., Westman Tr. at 156:12-157:2; Westman Ex. 26 (RCUCCJSN10692261) Dec. 1, 2012 Email from Barbara Westman.

⁹ Westman Ex. 33 (RCJSNII10074531) Bill of Sale and Transfer Agreement.

¹⁰ Westman Ex. 33 (RCJSNII10074531) Bill of Sale and Transfer Agreement.

¹¹ Westman Ex. 39 (RCUCCJSN00030215) Debt Forgiveness spreadsheet.

liabilities before determining whether they should be included in the reported financial statements.

12. I found no evidence suggesting that the transactions recorded that comprise the intercompany liabilities (i) were not accurately recorded in amount, (ii) were not recorded between the proper entities, (iii) were not recorded in the appropriate general ledger account, or (iv) not done in the normal course of business, for legitimate business purposes. Further, I found no evidence that, prior to the Petition Date, the Debtors viewed these intercompany liabilities as anything other than valid and collectible obligations. In fact, the Ally General Intercompany Accounting Policy states that: “The objective of this policy is to reduce the risk of inaccurate record keeping, unreliable financial information, misappropriation of assets, incorrect payments, and fraud, as well as to establish uniform standard for all Ally Business Units (Bus) and operations to facilitate an efficient consolidation process.”¹²

V. BASIS FOR OPINIONS AND OBSERVATIONS

13. My review and analysis of the Debtors’ external financial reports and internal records revealed that the Debtors’ consistently treated and reported intercompany balances as either intercompany receivables, payables or borrowings in their internal accounting records and external financial reports. They also relied on these financial records for determining and certifying compliance with certain regulatory and licensing requirements. Such accounting and reporting is an indication that the ResCap entities expected the intercompany balances would be repaid, and/or that repayment could be demanded. For example, during the deposition of Barbara Westman, one of the Debtors’ Corporate Representative, Ms. Westman

¹² RCJSNII10131859 at page 2 of 21.

testified about the validity and collectability of the \$1.8 billion RFC intercompany receivable due from ResCap as of December 31, 2011: “[I]t was a valid receivable as there was an ability for that to be collected, if necessary.”¹³

14. Specifically, the Debtors identified and reported intercompany balances as intercompany receivables, payables or borrowings in each of the following:

- Audited financial statements for certain ResCap subsidiaries that were provided to the Department of Housing and Urban Development (“HUD”), and made available to certain lenders through an Intralinks site¹⁴;
- ResCap’s Federal income tax returns;
- ResCap’s SEC filings;
- Trial balances and general ledgers; and
- Internal memoranda regarding intercompany accounting and intercompany balances.

15. Based on my review and analysis of the general ledger data produced by the Debtors,¹⁵ the intercompany transactions and their related descriptions that were recorded in the Debtors’ general ledgers for the Nine Largest Petition Date Intercompany Balances are generally consistent with the information contained in the following Debtor prepared documents and the testimony of the Debtors’ Corporate Representative (Westman):

- The Revised Disclosure Statement for the Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors (the “Revised Disclosure Statement”),¹⁶ including Exhibit 6 (List of Seven Largest Intercompany Balances) attached to the Revised Disclosure Statement;

¹³ Westman Tr. at 188: 9-11; *see also* Dondzila Ex. 8 (RCUCCJSN20080064).

¹⁴ Westman Tr. at 165:7-9; 172:5-9.

¹⁵ RCUCCJSN00012497-575.

¹⁶ Docket No. 4733.

- The Schedules of Assets and Liabilities for the Debtors (the “Debtors’ Schedules”);¹⁷
- The April 4, 2013 presentation prepared by the Debtors, Morrison & Foerster LLP and FTI Consulting, Inc. relating to intercompany balances as of the Petition Date, including information related to the debt forgiveness transactions from 2008 through the Petition Date (the “Debtors’ Intercompany Analysis”);¹⁸
- Email attachment containing fifteen intercompany balances as of the Petition Date and descriptions related to certain of those balances (the “January 2013 Intercompany Analysis”);¹⁹ and
- The Debtors’ Motion for Order Under Bankruptcy Code Sections 105(a), 345, 363, 364, and 503(b)(1) and Bankruptcy Rules 6003 and 6004 Authorizing (I) Continued Use of Cash Management Services and Practices...(the “First Day Cash Management Motion”).²⁰

16. Occasionally, intercompany debt was forgiven to allow an intercompany obligor to comply with regulatory and/or loan agreement net worth or solvency requirements applicable to various Debtors.²¹ A September 2007 Board Presentation noted that “Rescap and its subsidiaries have approximately 40 debt facilities that contain financial covenants. Failure of covenants not desirable as in most cases would trigger cross defaults and/or potential cross acceleration on other facilities.”²² In many cases, the debt forgiveness was necessary to allow the Debtors to continue to operate their business. The Debtors’ Corporate Representative

¹⁷ Docket Nos. 548 through 597 and 649.

¹⁸ RCUCCJSN11979453-63.

¹⁹ RCUCCJSN30004106-11 and RCUCCJSN30004112-4, email thread starting on December 12, 2012 through January 17, 2013, including the attachment to the email thread.

²⁰ Docket No. 16.

²¹ RCJSNII00025680 (Email from B. Westman, ResCap, to M. Renzi, FTI Consulting) (“[I]n order to maintain sufficient regulatory net worth to satisfy requirements, and to clean up balance sheets as part of entity minimization or sale activities, intercompany balances have been forgiven. In many cases, with the approval of the Ally Board of Directors. In most cases, but not all, the forgiveness has been treated as equity. In limited cases, where the forgiveness occurred with respect to collateralized borrowings, it may have been treated as income/expense.”)

²² EXAM10199064, at EXAM10199076.

(Hamzhepour), in testifying about a \$2 billion forgiveness in 2008, described the result of a failure to provide such forgiveness as follows:

Q. And if [RFC] had breached its financial covenants in March of 2008, would it have been able to continue to operate?

MR. KERR: Objection. Asked and answered.

A. It would have triggered a cross-default across all the company's credit facilities, putting in danger everyone's ability to operate.

Q. And the forgiveness of the indebtedness in 2008 by Residential Capital at least alleviated the danger that you just testified to; correct?

A. Correct.²³

17. Intercompany debt forgiveness required approval of the ResCap CFO, Board of Directors, and/or Executive Committee,²⁴ and in some instances could be effectuated only after receiving the approval of the Ally Board of Directors.²⁵ These debt forgiveness transactions were generally effectuated by way of capital contributions. Significant capital contributions made to any direct or indirect Ally subsidiary required the advance approval of the Ally Board of Directors.²⁶

18. The fact that the Debtors followed this formal process—requiring Board-level approvals for capital contributions—reinforces the notion that the Debtors regarded the underlying Intercompany Transactions as debt. If the underlying intercompany transactions were actually created by way of capital contributions or equity distributions, clearly such debt forgiveness would have been unnecessary. Moreover, if the intercompany transactions were actually equity transactions, effectuating them on a regular basis, in the ordinary course, without

²³ Hamzhepour Tr. at 23:10-23.

²⁴ RCUCJJSN10025065, Approval for the \$2 billion ResCap/RFC debt forgiveness, RCJSNII10118386-8, Approval for \$500 million GMACM/ResHolding debt forgiveness and RC40006523 at RC40006568-71, Approval for \$2 billion GMACM/ResHolding debt forgiveness.

²⁵ Westman Tr. at 219:18-24; Hamzhepour Ex. 1 (EXAM10362088) at EXAM10362089.

²⁶ Hamzhepour Ex. 1 (EXAM10362088) at EXAM10362089; Westman Tr. 45:20-25, 46:2-5.

requesting or receiving CFO, Board or Executive Committee approval, would have violated the policies and procedures governing when a subsidiary was permitted to make capital contributions and equity distributions.

19. My experience related to companies' use of centralized cash management systems is consistent with how the Debtors used the Debtors' Cash Management System, including the creation of intercompany accounts receivable and intercompany accounts payable as a result of the movement of cash resulting from the Debtors' Cash Management System. In my experience, I have not seen equity transactions among affiliates flow through centralized cash management systems; instead, transactions flowing through centralized cash management systems generally result from ordinary course operating transactions and result in the creation of intercompany assets and liabilities.

20. Although this report focuses primarily on the 9 largest intercompany balances, I have no reason to believe that my analysis would not apply equally to the intercompany transactions representing the remaining \$0.4 billion.

VI. THE DEBTORS' CASH MANAGEMENT SYSTEM

21. In the First Day Cash Management Motion, the Debtors explain that "the Cash Management System is an ordinary course, customary, and essential business system comprising a group of bank accounts and cash management practices. . . ."²⁷

22. The Debtors also explain in the First Day Cash Management Motion that:

In the normal operation of the Debtors' businesses, the Debtors maintain business relationships and undertake transactions with each other (the 'Intercompany Transactions'). As a result, there are numerous intercompany claims that reflect intercompany receivables and payments made to each other in the ordinary course of the Debtors businesses (the

²⁷ Docket No. 16, at ¶ 6.

‘Intercompany Claims’). Debtors maintain records of all Intercompany Transactions and can ascertain, trace, and account for all Intercompany Claims.

The Intercompany Transactions are ordinary course transactions that are integral to the Debtors’ businesses and the function of their Cash Management System.²⁸

23. The Debtors’ assertion that, as of the Petition Date, the Intercompany Balances generally were a result of the Debtors’ Cash Management System²⁹ is consistent with the information I have reviewed and analyzed in connection with preparing my report. I found no evidence suggesting that the Debtors’ statement that the various intercompany payables and receivables were largely accumulated through tens of thousands of separate transactions over a period of years under pre-petition loan agreements for the benefit of other Debtors or by operation of the Debtors’ Cash Management System³⁰ is inaccurate.

24. Based on my review of the information related to the Debtors’ Cash Management System, including its bank account structure and funds transfer processes,³¹ I believe the practices used by the Debtors to aggregate liquidity were somewhat less automated but generally consistent with my experience and understanding of how other companies use centralized cash management tools to process and record ordinary course operating transactions.

25. Based on my understanding of the Debtors’ Cash Management System and the testimony of the Debtors’ Corporate Representative (Westman),³² it is reasonable to conclude that the Debtors’ Nine Largest Petition Date Intercompany Balances primarily arose from either: a) ordinary course operating transactions that flowed through the Debtors’ Cash

²⁸ *Id.* at ¶¶ 71-72.

²⁹ Docket No. 4733 at 38, the Revised Disclosure Statement.

³⁰ *Id.*

³¹ PWC_001_1_00000154.

³² *See generally*, Westman Tr. at 37:12-44:24.

Management System, b) other ordinary course business transactions such as overhead allocations and asset sales, and/or c) transactions related to a specific borrowing arrangement.³³ The Debtors' businesses did not require substantial capital expenditures and consequently, it is unlikely that balances arose from capital investments.³⁴

26. My analysis of the intercompany balances indicates that the balances changed frequently and often materially in the years leading up to the Petition Date.³⁵ Debtors' Corporate Representative (Westman) testified that the intercompany balances changed monthly during the period 2008 through March 31, 2012.³⁶ For a number of the intercompany relationships discussed in this report, the "creditor" and the "debtor" in the intercompany relationship reversed over time.³⁷ This is not unusual with the normal operation of a cash management system, where operating subsidiaries both generate cash (creating a receivable) and use cash (creating a payable) in the ordinary course of their activities. In my opinion, this pattern is consistent with treating the intercompany balances as debt because the balances are typically incurred with an expectation that they will be repaid as business circumstances require. Indeed, that was the experience with respect to most of the intercompany balances examined in this report.

27. If the Debtors had intended the Intercompany Transactions to be equity contributions they would have recorded them as "additional paid-in capital" rather than as intercompany liabilities.³⁸ Indeed, the frequent movement of cash between an operating subsidiary and parent company, with both entities playing the roles of lender and borrower at

³³ RCJSNII10037951-3.

³⁴ Dondzila Tr. at 91:5-9.

³⁵ UCC18658, UCC17942 and RCJSNII10037951-3.

³⁶ Westman Tr. at 200:9-16.

³⁷ UCC18658 and UCC17942.

³⁸ Westman Tr. at 44:15-19.

various times, is not consistent with an equity investment. Equity investments in the parent-subsidiary context tend to be made by the parent to the operating subsidiary, typically to facilitate large capital expenditures and without recording an intercompany obligation. I have not seen any evidence that this type of activity generated the balances recorded in the intercompany accounts examined in this report.

VII. DEBTORS' INTERNAL AND EXTERNAL PRESENTATION OF INTERCOMPANIES BALANCES

28. The Debtors consistently recorded and reported intercompany balances as either intercompany receivables, payables or borrowings in their external financial reports and internal accounting records. Such reporting is another indication that the ResCap entities expected these intercompany balances to be repaid. Specifically, the Debtors clearly identified and reported intercompany balances as intercompany receivables, payables or borrowings in each of the following:

- Audited financial statements for certain ResCap subsidiaries that were provided to HUD, and made available to certain lenders through an Intralinks site;
- ResCap's Federal income tax returns;
- ResCap's SEC filings;
- Trial balances and general ledgers; and
- Internal memoranda regarding intercompany accounting and intercompany balances.

A. Audited Financial Statements of Certain ResCap Subsidiaries

29. The audited consolidated financial statements of certain ResCap subsidiaries, including GMACM, RFC and Homecomings Financial LLC ("Homecomings"), clearly identified and reported intercompany receivables and payables and borrowings in their respective balance sheets. This is discussed more fully in other sections of my report.

30. Further, GAAP require that the preparer of financial statements conclude that receivables reflected on the balance sheet are collectible. Here, the collectability of intercompany receivables was evaluated by both the preparer and the auditors and the receivable amounts were determined to be collectible.³⁹ Ms. Dondzila testified that intercompany receivables were evaluated for valuation or potential impairment under GAAP and only reflected in the financial statements as receivables after an evaluation of whether the receivable needed to be impaired.⁴⁰

B. Rescap's Federal Income Tax Returns

31. In its 2009, 2010 and 2011 federal income tax returns, ResCap reported intercompany payables within the "Other Liabilities" line 21 in Schedule L (Balance Sheet per Books) of Form 1120.⁴¹

32. In addition, the supporting schedule for Schedule L, Line 21 (Other Liabilities) indicates that there are Intercompany Payables and "Accounts Payable – Affiliates" that are recorded as liabilities on ResCap's balance sheet.⁴²

33. Such reporting is an indicator that the ResCap entities believed these intercompany balances were accurate and properly recorded as liabilities.

C. Rescap's Securities & Exchange Commission Filings

34. ResCap regularly reported supplemental financial information that included separate parent and subsidiary balance sheet information to the Securities and Exchange

³⁹ Westman Tr. at 184:13-185:4 ("[T]here is a receivable from ResCap on its financial statements, and we had to evaluate that receivable for collectability as part of our year-end audit. . . . The determination was, from a GAAP perspective, that that intercompany receivable could be reflected within the financial statements and it met the GAAP determination for collectability.")

⁴⁰ Dondzila Tr. at p. 61:23-62:6, 62:17-21.

⁴¹ ALLY_0337039-127, ALLY_0337325-408 and ALLY_0336317-756.

⁴² Ibid, at ALLY_0337329, ALLY_0337363, ALLY_0337044, ALLY_0337077, ALLY_0336322 and ALLY_0336585.

Commission. For example, in its Form 10Q/A for the quarterly period ended June 30, 2009, ResCap reported in excess of \$5.5 billion of borrowings outstanding among ResCap and its subsidiaries as of June 30, 2009 in the liabilities section of its condensed consolidating balance sheet.⁴³

35. ResCap similarly disclosed borrowings by its subsidiaries as liabilities in its SEC filings for the years ended December 31, 2007 and December 31, 2008 and for the quarterly periods ended March 31, 2008, June 30, 2008, September 30, 2008 and March 31, 2009. The table below sets forth a summary of this information.

	Parent	Guarantor Subsidiaries	Non- Guarantor Subsidiaries	Eliminations	Consolidated
<i>Borrowings from Parent (\$, 000s)</i>					
6/30/09	-	4,774,831	3,694,134	(5,537,796)	2,931,169
3/31/09	-	4,829,939	2,922,968	(5,342,982)	2,409,925
12/31/09	-	5,345,597	3,266,399	(5,948,675)	2,663,321
9/30/08	2,172,124	6,911,201	4,370,387	(10,183,129)	3,270,583
6/30/08	2,750,000	6,955,000	6,891,937	(11,896,937)	4,700,000

D. Rescap's Trial Balances and General Ledgers

36. The intercompany accounts in the Debtors' general ledgers are generally titled/named, "Note Receivable," "Intercompany," "Intercompany Receivable," "Intercompany Recvable," "Intercompany Rec," "Intercompany Payable/Recvable," "Interco LOC," "Interco Payable," "Intracompany payable – US Subs" and/or "A/P affiliates". The Debtors consistently

⁴³ Residential Capital, LLC Form 10-Q/A for the quarterly period ended June 30, 2009, filed on August 25, 2009, at p. 74.

treated and reported these intercompany account balances as either intercompany receivables, payables or borrowings in their trial balances.⁴⁴

37. In my opinion, the internal tracking and public reporting of intercompany balances is a strong indicator that the ResCap entities regarded the transactions as valid debt transactions and expected that the intercompany balances would be repaid.

E. Internal Memorandum

38. An April 22, 2012 email between the Debtors' Controller, Cathy Dondzila, to the Debtors' financial advisor, FTI, titled "Intercompany Follow Up"⁴⁵ also reflects that the ResCap entities expected the intercompany balances to be repaid:

- "As the operating companies generate cash, through asset sales, borrowings, asset liquidations etc., this cash moves upstream to ResCap. This again creates the payable on the Parent and the receivable at the operating company."
- "Finally, in order to maintain sufficient regulatory net worth to satisfy requirements, and to clean up balance sheets as part of entity minimization or sale activities, intercompany balances have been forgiven. In many cases, with the approval of the Ally Board of Directors."
- "Explain intent for each balance - loan or equity? Was there an expectation of repayment? This is not a question accounting can answer. *To the extent we have deemed a collateralized affiliate balance impaired we have impaired it through earnings. Otherwise we have concluded for GAAP financial statement purposes the balances were expected to be repaid.*" (emphasis added).
- "In standalone financial statements of the operating companies they are reported as affiliate receivables/payables/debt."

⁴⁴ See, e.g. EXAM00231095, EXAM00231097, EXAM00231098, EXAM00231100, EXAM00231101, EXAM00231103, EXAM00231104, EXAM00231105, EXAM00231106, EXAM00231107, EXAM00231108, EXAM00231109, EXAM00231110, EXAM00231111, and EXAM00231113.

⁴⁵ RCUCCJSN30023149-55, April 22, 2012 email from Cathy Dondzila (Ally) to Mark Renzi (FTI Consulting) and Barbara Westman (GMACM), including others from FTI Consulting on the cc line, re: Bounce – Intercompany Follow Up.

VIII. THE NINE LARGEST PETITION DATE INTERCOMPANY BALANCES

36. The Debtors have represented in the Debtors Schedules that they “have made every attempt to properly characterize, prioritize and classify all intercompany transaction(s).”⁴⁶ The Debtors’ Corporate Representative (Westman) testified about the months of diligence she engaged in with the Debtors’ lawyers and financial advisors to collect information regarding the intercompany balances, before they were scheduled. She testified that she was: “responsible for providing information that went into the[] schedules”,⁴⁷ and that “when we provided information for the SOAL, [] we believed it was accurate to the best of our knowledge at the time.”⁴⁸ She further specifically testified to the accuracy of the intercompany balances discussed herein.⁴⁹

A. Intercompany Claim #1 – Residential Capital, LLC Claim against GMAC Residential Holding Company, LLC

i. Background

39. According to Exhibit 6 to the Revised Disclosure Statement, GMAC Residential Holding Company, LLC (“ResHolding”) owes ResCap \$3,333.9 million of intercompany liabilities (the “ResHolding-ResCap Petition Date Intercompany Balance”).⁵⁰ The ResHolding Schedule F-1⁵¹ and the ResCap Schedule B-18⁵² reflect amounts owing by ResHolding to ResCap as follows:

⁴⁶ Docket No. 548, at p. 5 (Global Notes and Statement of Limitations, Methodology and Disclaimers regarding the Debtors’ Schedules of Assets and Liabilities and Statements of Financial Affairs).

⁴⁷ Westman Tr. at 116:3-5.

⁴⁸ Westman Tr. at 112:13-15.

⁴⁹ Westman Tr. at 112:16-113:2; 116:6-10; 117:17-20; 119:2-11; 119:12-24; 120:5-6; 122:13-20; 122:21-123:2; 123:3-8.

⁵⁰ Docket No. 4733, Revised Disclosure Statement, Exhibit 6.

⁵¹ Creditors Holding Unsecured Claims - ResHolding Schedules of Assets and Liabilities, Docket #565, pages 41 and 42.

⁵² Schedule of Other Liquidated Debts Owed to Debtor - ResCap Schedules of Assets and Liabilities, Docket #549, page 32.

(\$ in Millions)

Account # (per Stmt of Assets)	Account Name (per General Ledger)	Accounts Payable Entity	Accounts Receivable Entity	Petition Date Intercompany Balance
1140500006	Note Receivable from RESI	GMAC Residential Holding Company, LLC	Residential Capital, LLC	\$ 3,295.6
1140500007	Interest Rec from RFC/RESI	GMAC Residential Holding Company, LLC	Residential Capital, LLC	38.3
				<u>\$ 3,333.9</u>

ii. Observations

40. The Debtors' Corporate Representative (Westman) testified that the above balances were accurately reported as intercompany receivables and intercompany payables.⁵³ As the Debtors noted in Exhibit 6 to the Revised Disclosure Statement, this "[b]alance generally arose from transactions under an agreement between ResCap and ResHolding. ResHolding borrowed funds from ResCap and then distributed funds to GMACM for general operating purposes..."

41. The Debtors further noted that "[w]hile there was no fixed interest rate in the loan agreement, interest was paid regularly until the Petition Date".

42. The Debtors' disclosures appear consistent with what I observed in examining the general ledger data and other information produced by the Debtors.

43. In a March 20, 2012 memorandum from Barbara Westman discussing whether ResCap had the capacity to meet its intercompany obligations to RFC, Ms. Westman notes that "ResCap also maintains a \$3.6 billion receivable from GMACM, and could move assets from GMACM to RFC to reduce both outstanding balances."⁵⁴

44. According to the Debtors' Corporate Representative (Westman), interest accrued on this intercompany balance.⁵⁵

⁵³ Westman Tr. at 123:3-8.

⁵⁴ RCUCJJSN20051022, RCUCJJSN20051023, GMAC ResCap internal memo prepared by Barbara Westman on 3/20/2012.

⁵⁵ Westman Tr. at 155:25-157:2.

45. According to Exhibit 6 to the Revised Disclosure Statement, “In 2009, \$2.52 billion of debt owed by GMACM to ResHolding was forgiven so that GMACM could meet certain tangible net worth debt covenants. ResCap did not forgive any of ResHolding’s debt at that time because ResHolding was not at risk of defaulting on its net worth requirements.”⁵⁶ Based on my review of the Intercompany Transactions that the Debtors extracted from their general ledgers, the \$2.52 billion of debt owed by GMACM to ResHolding that was forgiven in 2009 was effectuated at GMACM by reducing its intercompany liability and increasing its member’s equity. This forgiveness was effected through a formal process, including approval of the Executive Committee of the ResCap Board of Directors⁵⁷ and the Ally Board of Directors.⁵⁸ As described above, if the intercompany payable did not reflect a bona fide liability, such forgiveness of the debt would have been unnecessary.⁵⁹

46. There is other evidence in the record that suggests that the Debtors treated this intercompany payable as a bona fide liability. The Company’s Controller, Cathy Dondzila, testified that the Intercompany receivable between ResHolding and RFC acted as a “line of credit” between ResCap and ResHolding (for the benefit of ResHolding’s operating subsidiary GMACM).⁶⁰ Internal documents similarly characterized this intercompany balance as a “LOC where GMACM can borrow funds, or contribute funds, to ResCap as needed. This borrowing is funneled through its parent, [ResHolding].”⁶¹

⁵⁶ Docket No. 4733, Revised Disclosure Statement, Exhibit 6.

⁵⁷ RCUCCJSN10025065, Approval for the \$2 billion ResCap/RFC debt forgiveness, RCJSNII10118387-8, Approval for \$500 million GMACM/ResHolding debt forgiveness and RC40006568-71, Approval for \$2 billion GMACM/ResHolding debt forgiveness.

⁵⁸ Hamzehpour Ex. 1 (EXAM10362088) at EXAM10362089.

⁵⁹ See ¶ 18.

⁶⁰ Dondzila Tr. at 32:6.

⁶¹ Dondzila Ex 2 (RCJSN20085254) at RCJSN20085255.

47. Similarly, this intercompany balance was used to facilitate other large intercompany transfers of value between GMACM and ResCap. For example, on April 22, 2011, GMACM, RFC, ResHolding, and ResCap executed a letter agreement regarding netting in connection with the sale of certain mortgage loans from GMACM to RFC, (the “Netting Agreement”). The Netting Agreement stated that “Pursuant to various intercompany loans, [ResHolding] owes amounts to [ResCap] in excess of the Purchase Price as of the date hereof.”⁶² Under the Netting Agreement, among other things, ResCap “fully and finally discharges [ResHolding] from its obligation to repay \$171,323,565.91 to ResCap under the intercompany loans (and subtracts such amount from the total amount due by [ResHolding] to ResCap under the intercompany loans).”⁶³

B. Intercompany Claim #2 – Residential Funding Company, LLC Claim against Residential Capital, LLC

i. Background

48. According to Exhibit 6 to the Revised Disclosure Statement, ResCap owes its direct subsidiary, RFC, \$1,954.9 million (net) of intercompany liabilities (the “ResCap-RFC Petition Date Intercompany Balance”). The RFC Schedule F-1⁶⁴, the ResCap Schedule F-1⁶⁵, the RFC Schedule B-18⁶⁶ and the ResCap Schedule B-18⁶⁷ reflect net amounts owing by ResCap to RFC as follows:

⁶² Westman Ex 33 (RCJSNII10074531) at RCJSN10074537.

⁶³ *Id.* at RCJSN10074538.

⁶⁴ Schedule of Other Liquidated Debts Owed to Debtor - RFC Schedules of Assets and Liabilities, Docket #548, page 115.

⁶⁵ Creditors Holding Unsecured Claims - ResCap Schedules of Assets and Liabilities, Docket #549, page 46.

⁶⁶ Schedule of Other Liquidated Debts Owed to Debtor - RFC Schedules of Assets and Liabilities, Docket #548, page 41.

⁶⁷ Schedule of Other Liquidated Debts Owed to Debtor - ResCap Schedules of Assets and Liabilities, Docket #549, page 32.

(\$ in Millions)

Account # (per Stmt of Assets)	Account Name (per General Ledger)	Accounts Payable Entity	Accounts Receivable Entity	Petition Date Intercompany Balance
2041200001	Intracompany payable - US Subs	Residential Funding Company, LLC	Residential Capital, LLC	\$ (0.1)
2020100002	ResCap Intercompany	Residential Capital, LLC	Residential Funding Company, LLC	1,955.0
				<u>\$ 1,954.9</u>

ii. Observations

49. The Debtors' Corporate Representative (Westman) testified that the above balances were accurately reported as intercompany receivables and intercompany payables.⁶⁸ As the Debtors disclosed in Exhibit 6 to the Revised Disclosure Statement, this Balance generally arose out of operation of the company's centralized cash management system. As RFC generated cash, that cash would be swept to ResCap. This Balance changed frequently."⁶⁹

50. Based on my review of RFC's independently audited financial statements for the years ended December 31, 2011 and 2010, RFC treated and recorded its intercompany balance due from ResCap as a fully collectible intercompany receivable. In fact, RFC clearly identified and reported \$1.84 billion and \$2.30 billion of receivables from its parent (ResCap) in the asset section of its balance sheet as of December 31, 2011 and December 31, 2010, respectively.⁷⁰

51. ResCap's own contemporaneous internal accounting memo, dated March 20, 2012,⁷¹ acknowledged that it was appropriate for RFC to record its intercompany balance due from ResCap as a fully collectible intercompany receivable as of December 31, 2011. A summary of this memo is presented below:

⁶⁸ Westman at 115:14-116:10.

⁶⁹ Docket No. 4733, Revised Disclosure Statement, Exhibit 6.

⁷⁰ RCUCJJSN00007239-99, at 242 (p. 4).

⁷¹ RCUCJJSN20051023, GMAC ResCap internal memo prepared by Barbara Westman on 3/20/2012.

- “This memo supports the appropriate accounting treatment for intercompany balances between RFC and ResCap. As of 12/31/11, RFC has an intercompany receivable balance from ResCap. This receivable is carried at its full value.”
- “To best facilitate this process, ResCap centralizes cash balances, and does not hold cash within most of its operating units. As operating entities acquire cash, it is moved through intercompany transactions to ResCap. Likewise, as operating entities require cash, the cash is provided by ResCap to those entities.”
- “Generally, assets presented in accordance with GAAP would be assessed for collectability. FASB Codification Subtopic 310-10-35-22 provides guidance on the impairment of receivables. A creditor is deemed impaired when it is probable that a creditor will be unable to pay all amounts due according to the contractual terms of the loan agreement.”
- “If required, ResCap could support its payable to RFC through sales or other liquidations of its GMACM holdings. ResCap also maintains a \$3.6 billion receivable from GMACM, and could move assets from GMACM to RFC to reduce both outstanding balances.”
- “Due to these circumstances, management concludes that ResCap maintains the ability to support its intercompany obligations with RFC, and therefore, no impairment of this receivable is warranted for the RFC stand-alone financial statements.”

52. The Debtors’ Corporate Representative (Westman) testified that in April 2011 and again in March 2012, they considered whether the intercompany receivable from ResCap could remain on RFC’s balance sheet. In both instances, after making a GAAP determination for collectability, i.e., considering whether the receivable could be collected, and conferring with their auditors Deloitte & Touche, the Debtors concluded that the receivable could remain on the balance sheet of RFC.⁷²

⁷² Westman Tr. 183:4-190:11.

53. According to Exhibit 6 to the Revised Disclosure Statement, “In 2008, \$2 billion of debt owed by RFC to ResCap was forgiven so that RFC could meet certain tangible net worth debt covenants.”⁷³ Based on my review of the Intercompany Transactions that the Debtors extracted from their general ledgers, the \$2 billion of debt owed by RFC to ResCap that was forgiven in 2009 was effectuated at RFC by reducing its intercompany liability and increasing its member’s equity. This forgiveness was effected through a formal process, including approval of the Executive Committee of the ResCap Board of Directors.⁷⁴ As described above, if the intercompany payable did not reflect a bona fide liability, such forgiveness of the debt would have been unnecessary.⁷⁵

54. There is other evidence in the record that suggests that the Debtors treated this intercompany payable as a bona fide liability. The Company’s Controller, Cathy Dondzila, testified that the Intercompany receivable between ResCap and RFC acted as a “line of credit” between ResCap and RFC.⁷⁶

55. Similarly, this intercompany balance was used to facilitate other large intercompany transfers of value between RFC and ResCap. As noted above, on April 22, 2011, GMACM, RFC, ResHolding, and ResCap executed a letter agreement regarding netting in connection with the sale of certain mortgage loans from GMACM to RFC, (the “Netting Agreement”) that stated that “Pursuant to various intercompany loans, ResCap owes amounts to [RFC] in excess of the Purchase Price as of the date hereof.”⁷⁷ Under the Netting Agreement, among other things, RFC “fully and finally discharges ResCap from its obligation to repay

⁷³ Docket No. 4733, Revised Disclosure Statement, Exhibit 6.

⁷⁴ Hamzehpour Ex. 1 (EXAM10362088) at EXAM10362089.

⁷⁵ See ¶ 18.

⁷⁶ Dondzila Tr. at 31:13-32:11.

⁷⁷ Westman Ex 33 (RCJSNII10074531) at RCJSN10074537.

\$171,323,565.91 to [RFC] under the intercompany loans (and subtracts such amount from the total amount due by ResCap to [RFC] under the intercompany loans).”⁷⁸

C. Intercompany Claim #3 – Homecomings Financial, LLC Claim against Residential Funding Company, LLC

i. Background

56. According to Exhibit 6 to the Revised Disclosure Statement, RFC owes its direct subsidiary Homecomings \$1,251.5 million of intercompany liabilities (the “RFC-Homecomings Petition Date Intercompany Balance”). The RFC Schedule F-1⁷⁹ and the Homecomings Schedule B-18⁸⁰ reflect amounts owing by RFC to Homecomings as follows:

(\$ in Millions)

Account # (per Stmt of Assets)	Account Name (per General Ledger)	Accounts Payable Entity	Accounts Receivable Entity	Petition Date Intercompany Balance
2041200001	Intracompany payable - US Subs	Residential Funding Company, LLC	Homecomings Financial, LLC	\$ 1,251.5

ii. Observations

57. The Debtors’ Corporate Representative (Westman) testified that the above balances were accurately reported as intercompany receivables and intercompany payables.⁸¹ Debtors disclosed in Exhibit 6 to the Revised Disclosure Statement that this “[b]alance generally arose out of operation of the company’s centralized cash management system. Homecomings sold loans to RFC for securitization as part of normal business operations, subserviced loans, and generated other cash through operations that was swept up to RFC. The receivable balance

⁷⁸ *Id.* at RCJSN10074538.

⁷⁹ Creditors Holding Unsecured Claims - RFC Schedules of Assets and Liabilities, Docket #548, page 110.

⁸⁰ Schedule of Other Liquidated Debts Owed to Debtor - Homecomings Schedules of Assets and Liabilities, Docket #579, page 31.

⁸¹ Westman Tr. at 117: 17-20.

consists largely of this, less payables to RFC for general overhead expenses. The balance changed frequently until 2008.”

58. By 2008, all of the business activities of Homecomings “were sold, transferred, or discontinued and it no longer had any licensing requirements that required financial statements,”⁸² Nevertheless, Homecomings still maintained assets as it “was listed as the named servicer for a variety of different. . . private label securitizations and the cost, effort, and exercise of having that changed was prohibitive. . . .”⁸³

59. The Debtors further noted that while Homecomings became largely dormant in 2008, it continued to have wind down activity that created cash that was swept up to RFC.

60. The Debtors also stated that interest was accrued but not settled in cash on the intercompany balance (this amount was included in the intercompany balance).⁸⁴

61. The information appears consistent with what I observed in examining the general ledger data produced by the Debtors.

62. By virtue of the Debtors’ Cash Management System, cash was routinely swept up from Homecomings to RFC, creating an intercompany payable owed to Homecomings. Homecomings clearly identified and reported intercompany receivable balances as affiliate receivables (net), in its independently audited financial statements. For example:

- Homecomings reported \$1.05 billion of affiliate receivables, net, as of December 31, 2008 in the assets section of its balance sheet.⁸⁵

⁸² Dondzila Tr. at 14:13-16.

⁸³ Dondzila Tr. at 15: 10-15.

⁸⁴ Docket No. 4733, Revised Disclosure Statement, Exhibit 6.

⁸⁵ EXAM00122166-94 at 68 (p. 2)

- Homecomings stated that “affiliate receivables are comprised of amounts due for servicing advances transferred at carrying value, fees charged for subservicing activities, and mortgage loans sold to affiliates of the Company. These receivables are recorded at their net realizable value.”⁸⁶

63. Indeed, it is apparent from the contemporaneous financial statements prepared by Homecomings that Homecomings expected its intercompany receivable balance due from RFC to be repaid.

64. The Debtors also observed that interest was accrued but not settled in cash. The audited financial statements prepared by Homecomings clearly reports that the interest income, like the principal, was recorded on the books and records of Homecomings. For example, the Homecomings December 31, 2008 audited financial statements states as follows:

“[Homecomings] is charged or credited interest by RFC for the net affiliate receivable/payable balance outstanding each month at a rate that represents RFC’s borrowing rate. At December 31, 2008, \$1,051,047 [\$ is thousands] net receivable was outstanding at an interest rate of 8.9%. The net interest credited and included in the consolidated statement of operations for the year ended December 31, 2008 is \$45,125 [\$ in thousands].”⁸⁷

65. Debtors have identified a loan agreement that relates to the intercompany relationship between Homecomings and RFC, although the lender-borrower relationship appears to have reversed.⁸⁸ The Debtors’ Corporate Representative (Westman) testified that neither she, nor anyone within the Company, knew the particulars about this agreement, including whether it would apply to the current Intercompany Balance. The Debtors’ Corporate Representative

⁸⁶ EXAM00122166-94 at 76 (p. 10)

⁸⁷ *Ibid*, at p. 25.

⁸⁸ See Westman Ex. 20, Amended and Restated Intercompany Advance Agreement between Homecomings and RFC.

(Westman) noted that interest accrued on this balance at the same rate provided for in the agreement identified.⁸⁹

D. Intercompany Claim #4 – Passive Asset Transactions, LLC Claim against GMAC Mortgage, LLC

i. Background

66. According to Exhibit 6 to the Revised Disclosure Statement, GMACM owes its direct subsidiary, Passive Asset Transaction, LLC (“PATI”) \$697.0 million.⁹⁰ The GMACM Schedule F-1⁹¹ and the PATI Schedule B-18⁹² reflect amounts owing by GMACM to PATI as follows:

(\$ in Millions)

Account # (per Stmt of Assets)	Account Name (per General Ledger)	Accounts Payable Entity	Accounts Receivable Entity	Petition Date Intercompany Balance
24000195	Interco Payable (001 / 095)	GMAC Mortgage, LLC	Passive Asset Transactions, LLC	\$ 689.2
20412001	Intercompany Payable/Receivable	GMAC Mortgage, LLC	Passive Asset Transactions, LLC	7.8
				<u>\$ 697.0</u>

ii. Observations

67. The Debtors’ Corporate Representative (Westman) testified that the above balances were accurately reported as intercompany receivables and intercompany payables.⁹³ The Debtors disclosed in Exhibit 6 to the Revised Disclosure Statement that this “[b]alance generally arose out of operation of the company’s centralized cash management system. Majority of balance reflects cash collected by PATI from non-Debtor entities (Flume and GX II)

⁸⁹ Westman Tr. 143:19-144:3; 153:7-155:16.

⁹⁰ Docket No. 4733, Disclosure Statement, Exhibit 6.

⁹¹ Creditors Holding Unsecured Claims - GMACM Schedules of Assets and Liabilities, Docket #550, page 779.

⁹² Schedule of Other Liquidated Debts Owed to Debtor - PATI Schedules of Assets and Liabilities, Docket #582, page 32.

⁹³ Westman Tr. at 120:5-6.

that were swept to GMACM and then to ResCap.”⁹⁴ As the Debtors’ Corporate Representative (Westman) explained, “Passive Asset Transactions was a holder of international notes and it would receive cash as a holder of those international notes in receipt of that cash through the cash management process, it would have pushed that cash up to its parent, GMAC Mortgage.”⁹⁵

68. The information is consistent with what I observed in examining the general ledger data and other information produced by the Debtors.

69. According to Exhibit 6 to the Revised Disclosure Statement, “In 2008, \$44 million of debt owed by PATI to GMACM was forgiven so that PATI could meet certain tangible net worth debt covenants.”⁹⁶ Based on my review of the Intercompany Transactions that the Debtors extracted from their general ledgers, the \$44 million of debt owed by PATI to GMACM that was forgiven in 2008 was effectuated at PATI by reducing its intercompany liability and increasing its member’s equity. The Debtors’ Corporate Representative (Westman) testified that all debt forgiveness received the appropriate approvals as required by a particular transaction.⁹⁷ Thus, it is my understanding that the ResCap CFO approved this debt forgiveness in accordance with the RFC/GMACM Debt Forgiveness Procedures.⁹⁸ As described above, if the intercompany payable did not reflect a bona fide liability, such forgiveness of the debt would have been unnecessary.⁹⁹

⁹⁴ Docket No. 4733, Revised Disclosure Statement, Exhibit 6.

⁹⁵ Westman 205:24-206:10.

⁹⁶ Docket No. 4733, Revised Disclosure Statement, Exhibit 6.

⁹⁷ Westman Tr. at 219:25-220:6.

⁹⁸ Hamzehpour Ex. 1 (EXAM10362088) at EXAM10362089-90.

⁹⁹ See ¶ 18.

E. Intercompany Claim #5 – Executive Trustee Services, LLC Claim against GMAC Mortgage, LLC

i. Background

70. According to Exhibit 6 to the Revised Disclosure Statement, GMACM owes its direct subsidiary, ETS, \$265.4 million (net). The GMACM Schedule F-1¹⁰⁰, the ETS Schedule F-1¹⁰¹, the GMACM Schedule B-18¹⁰² and the ETS Schedule B-18¹⁰³ reflect net amounts owing by GMACM to ETS as follows:

(\$ in Millions)

Account # (per Stmt of Assets)	Account Name (per General Ledger)	Accounts Payable Entity	Accounts Receivable Entity	Petition Date Intercompany Balance
20412001	Intercompany Payable/Receivable	Executive Trustee Services, LLC	GMAC Mortgage, LLC	\$ (10.9)
204120001	Intracompany payable - US Subs	Executive Trustee Services, LLC	GMAC Mortgage, LLC	(0.2)
24008888	Interco Payable Self Elim	Executive Trustee Services, LLC	GMAC Mortgage, LLC	(0.0)
24000102	A/P Affiliates - 001 / 002	GMAC Mortgage, LLC	Executive Trustee Services, LLC	276.5
				<u>\$ 265.4</u>

ii. Observations

71. The Debtors' Corporate Representative (Westman) testified that the balances above were accurately reported as intercompany receivables and intercompany payables.¹⁰⁴ Debtors disclosed in Exhibit 6 to the Revised Disclosure Statement that this:

- “Balance generally arose out of operation of the company’s centralized cash management system. Revenue received by ETS (as foreclosure trustee) was swept to

¹⁰⁰ Creditors Holding Unsecured Claims - GMACM Schedules of Assets and Liabilities, Docket #550, page 760.

¹⁰¹ Creditors Holding Unsecured Claims - ETS Schedules of Assets and Liabilities, Docket #561, page 44.

¹⁰² Schedule of Other Liquidated Debts Owed to Debtor - GMACM Schedules of Assets and Liabilities, Docket #550, page 42.

¹⁰³ Schedule of Other Liquidated Debts Owed to Debtor - ETS Schedules of Assets and Liabilities, Docket #561, page 31.

¹⁰⁴ Westman Tr. at 119:2-120:6.

GMACM. GMACM, in turn, satisfied ETS's cash needs. Intercompany balances were created to record impact to ETS, but no cash settlements occurred."

- ETS is composed of a group of companies whose principal business activities, for which they received revenue, "were attempts at recovery against losses that were incurred for liquidated loans. So attempting to collect from borrowers any amounts that had been lost through other avenues, and also providing Trustee Services around the foreclosure process. . . ." ¹⁰⁵ Cash was generated by ETS's business activities. ¹⁰⁶
- Interest was accrued but not paid on the intercompany balance (this amount has been included in the intercompany balance). ¹⁰⁷

72. As noted above, the Intercompany Balances created through the ordinary course activities of an operating subsidiary are generally recorded as debt. In this instance, ETS performed services and received cash in consideration for those services. The cash was swept up to GMACM as part of the cash management process and, in return for its cash, ETS recorded a receivable from GMACM. ¹⁰⁸ As described above, this accounting is consistent with recording the receivable as debt and inconsistent with an equity transaction. ¹⁰⁹

¹⁰⁵ Dondzila Tr. at 36:25-37:7.

¹⁰⁶ *Id.* at 99:17-23.

¹⁰⁷ Docket No. 4733, Revised Disclosure Statement, Exhibit 6.

¹⁰⁸ *See* Westman Tr. at 103:4-104:18, Westman Ex. 7 (RCUCCJSN20064737) at RCUCCJSN20064744-45.

¹⁰⁹ *See* ¶ 18 (ordinary course intercompany transactions are more consistent with debt because effecting equity transactions in the ordinary course would violate policies and procedures) and ¶ 27 (subsidiaries do not typically make equity investments in their parents).

F. Intercompany Claim #6 – Residential Funding Company, LLC Claim against RFC Asset Holdings II, LLC

i. Background

73. According to Exhibit 6 to the Revised Disclosure Statement, RFC Asset Holdings II, LLC (“RAHI”) owes its direct parent, RFC \$231.9 million. The RAHI Schedule F-1¹¹⁰ and the RFC Schedule B-18¹¹¹ reflect amounts owing by RAHI to RFC as follows:

(\$ in Millions)

Account # (per Stmt of Assets)	Account Name (per General Ledger)	Accounts Payable Entity	Accounts Receivable Entity	Petition Date Intercompany Balance
2041200001	Intracompany payable - US Subs	RFC Asset Holdings II, LLC	Residential Funding Company, LLC	\$ 231.9

ii. Observations

74. The Debtors’ Corporate Representative (Westman) testified that the balance above was accurately reported as intercompany receivables and intercompany payables.¹¹² Debtors disclosed in Exhibit 6 to the Revised Disclosure Statement that this “[b]alance generally arose out of operation of the company’s centralized cash management system. RAHI owned a portfolio of non-economic residuals that generated excess inclusion income that resulted in current taxes payable. Balance primarily attributable to settlement of taxes under the tax sharing agreement.” As Ms. Westman explained, this balance reflected monies used for accounts payable and interest expense.¹¹³

¹¹⁰ Creditors Holding Unsecured Claims - RAHI Schedules of Assets and Liabilities, Docket #586, page 44.

¹¹¹ Schedule of Other Liquidated Debts Owed to Debtor - RFC Schedules of Assets and Liabilities, Docket #548, page 41.

¹¹² Westman at 112:16-113:2.

¹¹³ *Ibid*, at 207.

75. The Debtors further stated that, “Interest was accrued but not paid on the intercompany balance (this amount has been included in the intercompany balance).”¹¹⁴ This was confirmed by the Debtors’ Corporate Representative who testified that interest accrued on this account but was not cash-settled.¹¹⁵

76. According to Exhibit 6 to the Revised Disclosure Statement, “In 2008, \$1.2 billion of debt owed by RAHI to RFC was forgiven so that RAHI could meet certain tangible net worth debt covenants.”¹¹⁶ Based on my review of the Intercompany Transactions that the Debtors extracted from their general ledgers, the \$1.2 billion of debt owed by RAHI to RFC that was forgiven in 2008 was effectuated at RAHI by reducing its intercompany liability and increasing its member’s equity. The Debtors’ Corporate Representative (Westman) testified that all debt forgiveness received the appropriate approvals as required by a particular transaction.¹¹⁷ Thus, it is my understanding that the Ally Board of Directors approved this debt forgiveness in accordance with the RFC/GMACM Debt Forgiveness Procedures.¹¹⁸ As described above, if the intercompany payable did not reflect a bona fide liability, such forgiveness of the debt would have been unnecessary.¹¹⁹

¹¹⁴ Docket No. 4733, Revised Disclosure Statement, Exhibit 6.

¹¹⁵ Westman Tr. at 160:2-9.

¹¹⁶ Docket No. 4733, Revised Disclosure Statement, Exhibit 6.

¹¹⁷ Westman Tr. 219:25-220:6.

¹¹⁸ Hamzehpour Ex. 1 (EXAM10362088) at EXAM10362089.

¹¹⁹ See ¶ 18.

**G. Intercompany Claim #7 – Residential Funding Company, LLC Claim against
GMAC Mortgage, LLC**

i. Background

77. According to Exhibit 6 to the Revised Disclosure Statement, GMACM owes an affiliate, RFC \$139.7 million. The GMACM Schedule F-1¹²⁰ and the RFC Schedule B-18¹²¹ reflect amounts owing by GMACM to RFC as follows:

(\$ in Millions)

Account # (per Stmt of Assets)	Account Name (per General Ledger)	Accounts Payable Entity	Accounts Receivable Entity	Petition Date Intercompany Balance
2020100001	GMAC RESI Intercompany	GMAC Mortgage, LLC	Residential Funding Company, LLC	\$ 133.7
20412001	Intercompany Payable/Recvble	GMAC Mortgage, LLC	Residential Funding Company, LLC	6.0
				<u>\$ 139.7</u>

ii. Observations

78. The Debtors disclosed in Exhibit 6 to the Revised Disclosure Statement that the “[m]ajority of balance consists of: (i) amounts recorded in connection with AFI billings for shared services (e.g. payroll, outside counsel) – RFC routinely remitted payment to AFI for services and RFC then charged GMACM for its portion; and (ii) service fee income received by GMACM as subservicer relating to RFC MSR.”¹²²

79. Cathy Dondzila, the former Controller for ResCap, explained with respect to the shared services balance that “Ally Financial allocated costs. Those allocations and charges related to those allocations were recorded initially to [RFC], and then the appropriate portion

¹²⁰ Creditors Holding Unsecured Claims - GMACM Schedules of Assets and Liabilities, Docket #5550, page 783.

¹²¹ Schedule of Other Liquidated Debts Owed to Debtor - RFC Schedules of Assets and Liabilities, Docket #548, page 41.

¹²² Docket No. 4733, Revised Disclosure Statement, Exhibit 6.

would then be moved from [RFC] down to GMAC Mortgage.”¹²³ Ms. Dondzila then explained that GMAC Mortgage and RFC were actually “sister” companies and that she did not know why Ally did not just allocate its costs directly to GMACM.¹²⁴

80. The fact that the Intercompany Balance was between two sister companies (rather than a parent making an investment in a wholly-owned subsidiary) is also reflective of an intent to treat this balance as debt. I would not expect an equity investment between sister companies to be reflected on a company’s book and records as an intercompany receivable. Indeed, the sister company would receive none of the customary benefits attributable to an equity investment in connection with this type of transaction.

81. GMACM clearly identified and reported intercompany balances as “Other Liabilities – Payables” to RFC in its independently audited financial statements. For example, GMACM reported \$69.79 million of payables owed to RFC as of December 31, 2011. (*See* EXAM00234281 at 316 (p. 36)).¹²⁵ It is apparent from these contemporaneous financial statements that GMACM expected to repay its intercompany payable due to RFC since it specifically reported those amounts as debts in its financial statements.

H. Intercompany Claim #8 – Home Connect Lending Services, LLC Claim against GMAC Residential Holding Company, LLC

i. Background

82. According to the January 2013 Intercompany Analysis,¹²⁶ ResHolding owes Home Connects Lending Services, LLC \$54.6 million. The ResHolding Schedule F-1¹²⁷

¹²³ Tr. of Cathy Dondzila at 42-43.

¹²⁴ *Id.* at 43.

¹²⁵ EXAM0234281-349, at 345 (p.65).

¹²⁶ RCUCCJSN30004106-11 and RCUCCJSN30004112-4, email thread starting on December 12, 2012 through January 17, 2013, including the attachment to the email thread.

¹²⁷ Creditors Holding Unsecured Claims - ResHolding Schedules of Assets and Liabilities, Docket #565, page 41.

and the Home Connects Lending Services, LLC Schedule B-18¹²⁸ reflect amounts owing by GMACM to Home Connects Lending Services, LLC as follows:

(\$ in Millions)

Account # (per Stmt of Assets)	Account Name (per General Ledger)	Accounts Payable Entity	Accounts Receivable Entity	Petition Date Intercompany Balance
24000267	Intercompany Payable (033/067)	GMAC Residential Holding Company, LLC	Home Connects Lending Services, LLC	\$ 54.6

ii. Observations

83. The Debtors' Corporate Representative (Westman) testified that the balance above was accurately reported as intercompany receivables and intercompany payables.¹²⁹ According to Exhibit 6 to the January 2013 Intercompany Analysis, "[t]he balances at October 31, 2012 have not changed significantly since December 2008. The balances resulted from intercompany clean up to the closure of HCLS, LLC (SS097) and related entities."¹³⁰ The Debtors' Corporate Representative testified that this intercompany balance also reflected, in part, the movement of cash through the cash management system.¹³¹

84. The information is consistent with what I observed in examining the general ledger data and other information produced by the Debtors, and the testimony of the Debtors' witnesses and Corporate Representatives that have proceeded to date.

¹²⁸ Schedule of Other Liquidated Debts Owed to Debtor - Home Connects Lending Services, LLC Schedules of Assets and Liabilities, Docket #575, page 23.

¹²⁹ Westman Tr. at 122:21-123:2.

¹³⁰ RCUCCJSN30004106-11 and RCUCCJSN30004112-4, email thread starting on December 12, 2012 through January 17, 2013, including the attachment to the email thread.

¹³¹ Westman Tr. at 76:8-79:23.

I. Intercompany Claim #9 – GMAC Residential Holding Company, LLC Claim against GMAC Mortgage, LLC

i. Background

85. According to the January 2013 Intercompany Analysis,¹³² GMACM owes ResHolding \$51.4 million (net). The GMACM Schedule F-1¹³³, the ResHolding Schedule F-1¹³⁴, the GMACM Schedule B-18¹³⁵ and the ResHolding Schedule B-18¹³⁶ reflect net amounts owing by GMACM to ResHolding as follows:

(\$ in Millions)

Account # (per Stmt of Assets)	Account Name (per General Ledger)	Accounts Payable Entity	Accounts Receivable Entity	Petition Date Intercompany Balance
24000033	Interest Rec/Pay (001/033)	GMAC Mortgage, LLC	GMAC Residential Holding Company, LLC	\$ 108.0
20412001	Intercompany Payable/Recvble	GMAC Mortgage, LLC	GMAC Residential Holding Company, LLC	1.5
24000233	Interco LOC (001/033)	GMAC Residential Holding Company, LLC	GMAC Mortgage, LLC	(58.2)
				<u>\$ 51.4</u>

ii. Observations

86. The Debtors’ Corporate Representative (Westman) testified that the above balances were accurately reported as intercompany receivables and intercompany payables.¹³⁷

87. Debtors disclosed in Exhibit 6 to the January 2013 Intercompany Analysis that “The balance at October 31, 2102 represents borrowings under an unsecured credit facility between GMAC Mortgage and its parent, RHC. This agreement was originally entered into in December 1998. The monthly activity represents the borrowings for the general

¹³² RCUCCJSN30004106-11 and RCUCCJSN30004112-4, email thread starting on December 12, 2012 through January 17, 2013, including the attachment to the email thread.

¹³³ Creditors Holding Unsecured Claims - GMACM Schedules of Assets and Liabilities, Docket #550, page 763

¹³⁴ Creditors Holding Unsecured Claims - ResHolding Schedules of Assets and Liabilities, Docket #565, page 41.

¹³⁵ Schedule of Other Liquidated Debts Owed to Debtor - GMACM Schedules of Assets and Liabilities, Docket #550, page 42.

¹³⁶ Schedule of Other Liquidated Debts Owed to Debtor - ResHolding Schedules of Assets and Liabilities, Docket #565, page 23.

¹³⁷ Westman Tr. at 119:12-24; 122:13-20.

operating needs of GMAC Mortgage. Repayments on these borrowings were made on a recurring basis until the petition date.” The Debtors’ Corporate Representative (Westman) testified that this intercompany balance also reflected, in part, the movement of cash through the cash management system.¹³⁸

88. The Debtors further stated that “[t]he interest rate under this agreement fluctuates monthly and is a stated margin, agreed between the Company and RHC, which is generally between 100 and 300 basis points above a quoted short-term market rate. Interest was accrued on a monthly basis until the petition date. The credit facility is payable upon demand.”¹³⁹

89. GMACM clearly identified and reported intercompany balances, including the Intercompany Balance between GMACM and ResHolding as receivables from affiliates or borrowings from parent (ResHolding) in its independently audited financial statements. For example, GMACM reported \$515.89 million and \$358.71 million of borrowings from parent (ResHolding) as of December 31, 2010 and 2009, respectively.¹⁴⁰

90. It is apparent from the contemporaneous financial statements prepared by GMACM that GMACM expected to repay its intercompany payable due to ResHolding since it specifically reported those amounts as debts.

91. The Debtors also observed that interest was accrued on these borrowings.¹⁴¹ The audited financial statements prepared by GMACM clearly reports that the interest expense, like the principal, was recorded on the books and records of GMACM. For

¹³⁸ Westman Tr. 79:12-18.

¹³⁹ RCUCCJSN30004106-11 and RCUCCJSN30004112-4, email thread starting on December 12, 2012 through January 17, 2013, including the attachment to the email thread.

¹⁴⁰ EXAM00234350-412 at 353 (p. 4).

¹⁴¹ See also Westman Tr. at 159:18-25.

example, GMACM reported \$15.54 million and \$30.15 million of interest expense on borrowings from parent (ResHolding) for the years ended December 31, 2010 and December 31, 2009, respectively.¹⁴²

**IX. DEBT FORGIVENESS AMONG RESCAP ENTITIES AND APPROVALS
RECEIVED FROM ALLY'S BOARD OF DIRECTORS**

92. According to Article II, Section K of the Revised Disclosure Statement:

“On numerous occasions, where the existence of an intercompany payable on a Debtor’s balance sheet threatened the solvency and net worth thresholds required under external funding agreements, or by federal or state regulations, the putative debt obligations were forgiven. Additionally, putative debt obligations were forgiven among the Debtors and certain non-Debtor subsidiaries in connection with the Debtors’ international transactions and the dissolution of entities. Approximately \$16.6 billion of debt was forgiven without consideration from 2007 through the Petition Date.”

93. The Debtors have noted the fact that the debt forgiveness was effectuated through a capital contribution (i.e., through the equity account). However, Cathy Dondzila, the Debtors’ former Controller, testified that the Debtors did so only because they had concluded that GAAP required that intercompany indebtedness be written off in this manner.¹⁴³ Internal communications reflect that the Debtors were relying upon AICPA Practice Alert 00-1 (Extinguishment of related Party Debt) ¶¶ 27-28¹⁴⁴ in arriving at their determination to use the equity account to effectuate the debt forgiveness.

¹⁴² *Ibid*, at 410 (p. 61).

¹⁴³ Dondzila Tr. at 84:13-86:6.

¹⁴⁴ RCJSNII10041531 at RCJSNII10041532.

94. The forgiveness of intercompany debt required various levels of approval depending upon the amount forgiven. As the Debtors' Corporate Representative (Westman) explained, "[g]enerally, it would be determined that a particular debt was a balance that we would look to forgive to solve a certain net worth issue, et cetera. That balance would be identified and documentation would be put together in a request form. That would -- that request would go through Cathy, generally, and would be provided to the CFO or on up to board of directors or Executive Committee, depending on where it - where it needed to go for the particular balance and dollar amount, and it would be presented for recommendation and approval.¹⁴⁵ To the knowledge of the Debtors' Corporate Representative: "all debt forgiveness received the appropriate approvals as required by the particular transaction."¹⁴⁶ This review and approval process is set forth in detail in a document prepared by Ms. Westman in 2010.¹⁴⁷

95. The ResCap Debt Forgiveness Schedule by Legal Entity (the "Debt Forgiveness Schedule")¹⁴⁸ identifies approximately \$16.6 billion of debt forgiveness between 2008 and 2012. Of this amount, approximately \$7.9 billion, \$4.1 billion, \$1.9 billion, \$2.3 billion and \$0.4 billion was forgiven in 2008, 2009, 2010, 2011 and 2012 respectively. This schedule does not appear to specifically enumerate the \$44 million in debt owed to GMACM by PATI that was forgiven in 2008 (See Section VII. D. to this report).

96. The Debt Forgiveness Schedule identifies the specific "debt forgiveness":

- \$2.151 billion owed by ResFunding to ResCap was forgiven between 2008 (\$2.0 billion) and 2009 (\$0.151 billion). The ResCap Executive Committee approved the forgiveness of the \$2.0 billion on March 26, 2008 (RCUCCJSN10025065).

¹⁴⁵ Westman Tr. at 219:12-24.

¹⁴⁶ *Ibid*, at p. 220.

¹⁴⁷ Hamzehpour Ex. 1 (EXAM10362088) at EXAM10362089.

¹⁴⁸ RCUCCJSN11270924.

- \$2.52 billion owed by GMACM to GMAC Residential Holding Co, LLC was forgiven in 2009. The ResCap Executive Committee approved the forgiveness of \$0.5 billion on June 3, 2009 (RCJSNII10118387-8) and \$2 billion on June 25, 2009 (RC40006569 – 70).
- \$1.228 billion owed by RHAI to ResFunding was forgiven in 2008.
- The majority of the remaining forgiveness (\$10.69 billion) relates to approximately 50 entities; consisting of foreign affiliates, special purpose entities and entities that were dissolved or sold.
- This schedule does not appear to include the \$44 million in debt owed to GMACM by PATI that was forgiven in 2008 (See Section VII. D. to this report).

97. Concerning the first two items above, analysis of entries in Debtors' general ledgers shows that the "debt forgiveness" transactions were recorded as "capital injections In the form of forgiveness of debt"¹⁴⁹ or debt for equity exchanges. The entries recorded on the books of the obligor were:

- Debit: Intercompany Payable – reducing the amount of the obligation by the "forgiven" amount.
- Credit: Additional Paid in Capital (a component of the equity section of a company's balance sheet) – increasing equity by the "forgiven" amount.

98. It should be noted that a description field in the Debtors' general ledgers for the entries reflecting these "forgiveness" transactions identifies the transactions as "Debt Forgiveness." Regardless of whether such a transaction is recorded as a forgiveness or a capital infusion, the impact on the obligor's balance sheet is essentially identical:

- Intercompany debt is reduced by the amount of the "forgiveness."
- The obligor's equity is increased by the amount of the "forgiveness."

¹⁴⁹ RCUCCJSN30002765.

99. Releasing intercompany obligors from amounts owing required approval of ResCap's Chief Executive Officer, Board of Directors and/or Executive Committee. Debt forgiveness in amounts greater than \$50 million also required the approval of the Ally Board of Directors.¹⁵⁰ The Debtors' Corporate Representative (Westman) testified that all debt forgiveness received appropriate approvals as required by a particular transaction.¹⁵¹ The formal process described and carefully followed for each such transaction is further evidence that the transactions that resulted in the intercompany balances were considered debt transactions, not equity investments or distributions, when they were completed. As Ms. Westman testified, generating intercompany receivables or payables happened in the normal course of business and did not require Board approval. In contrast, "a capital contribution or a dividend would have been something that had to be declared by the board of those entities and would have been a specific type of transaction."¹⁵²

100. The Debtors focused on both the interests of the "lender" and the "borrower" entity in connection with the debt forgiveness process. Ms. Hamzhepour testified that the entity forgiving intercompany debt would have had no desire to forgive more than the amount required to meet net worth or solvency requirements.¹⁵³ This suggests that the ResCap entities only exchanged debt for equity when it was absolutely necessary to do so in order to continue normal operations and avoid defaults under debt agreements. As articulated in a contemporaneous communication from Ms. Hamzhepour (in which she articulates the interests of the "lender" being asked to forgive the "debt"): "It is not in ResCap's or the Group's best

¹⁵⁰ EXAM10362089

¹⁵¹ Hamzhepour Ex. 1 (EXAM10362088) at EXAM10362089.

¹⁵² Westman Tr. 45:25-46:5.

¹⁵³ Hamzhepour Tr. at 31:13-16.

interest to release debt in excess of the amount needed to meet the above goals and, for this reason, the GMAC Inc. Board Resolutions authorizing debt forgiveness for certain ResCap subsidiaries referred to releases ‘up to’ a maximum amount.”¹⁵⁴

101. As set forth in paragraphs 16-18 of my report, the debt forgiveness process was formal and, according to the Debtors’ Corporate Representative (Hamzepour), enabled the Debtors to continue operating from 2008 on.¹⁵⁵ Complying with the various tangible net worth requirements imposed on the Debtors by liquidity providers, state and federal regulators, and the GSE’s were all, to varying degrees, critical to the continued operations of the Debtors. In that way, the debt forgiveness (which facilitated compliance with those tangible net worth requirements) provided value to both the obligor and obligee of the debt being forgiven.

102. In my opinion, there is nothing about the debt forgiveness process that would suggest to me that the Debtors intended to treat the Intercompany Balances as anything other than debt.

X. SIGNATURE AND RIGHT TO SUPPLEMENT AND/OR MODIFY

103. I reserve the right to supplement and/or modify my report based on the production of and/or access to additional information or any other information or data, including additional deposition testimony, that was not available to me prior to the issuance my report.

104. This report has been prepared for use in these subject legal proceedings and may not be used or relied upon for any other purpose without the express written consent of Zolfo Cooper.

¹⁵⁴ Hamzepour Ex. 6 (EXAM11148024); *see also* Hamzepour Tr. 30:15-32:10.

¹⁵⁵ Hamzepour Ex. 6; Hamzepour Tr. at 20:25-24:16.

XI. INDEX OF EXHIBITS

1. Curriculum Vitae of Robert S. Bingham
2. Documents Considered

X. SIGNATURE AND RIGHT TO SUPPLEMENT AND/OR MODIFY

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104. This report has been prepared for use in these subject legal proceedings and may not be used or relied upon for any other purpose without the express written consent of Zolfo Cooper.



Robert S. Bingham

October 18, 2013



EXHIBIT 1

Curriculum Vitae of Robert S. Bingham, CIRA

I am a Senior Director with Zolfo Cooper LLC. I have 35 years of experience in a variety of auditing, financial and accounting management and consulting positions, including over 15,000 hours as an officer or advisor to companies either in preparing to file bankruptcy, in bankruptcy or recently emerged from bankruptcy. I have been an officer and/or advisor and confirmation hearing witness on several large bankruptcies involving multiple affiliated entities with large claims among the entities. I am a Certified Insolvency and Restructuring Advisor.

Representative Experience – Bankruptcies

- Enron Corp. – Associate Director of Restructuring; Interim Chief Financial Officer and Treasurer; 2002 through 2006

The Enron group included in excess of 2,000 entities and in excess of 26,000 intercompany accounts with pre-petition balances amounting to multiple tens of billions of dollars. My primary responsibilities included plan of reorganization development, claims classification, including evaluation and treatment of intercompany claims, plan explanation and negotiation with various constituencies, resolution of certain claims and supervision of treasury, insurance and tax departments. Additionally, I served as a member of the board of directors and chairman of the audit committee for Portland General Electric, an Enron subsidiary with public reporting requirements. At the confirmation hearing, I testified concerning specific asset dispositions and claims settlements related to the recovery model, treatment of claims, including intercompany claims, the mechanics of a very complicated plan of reorganization and best interest test. I testified at the final status conference concerning plan implementation and distribution status.

- The Loewen Group Inc. – Financial Advisor to the Company, 2000 and 2001

The Loewen Group Inc. was a holding company whose subsidiaries operated funeral homes throughout the United States and Canada. There were in excess of 1,500 legal entities in the group; over 800 of which filed for bankruptcy protection in the United States. Total intercompany claims amounted to several billion dollars. My responsibilities included plan development, recovery model preparation (including analysis and classification of intercompany claims). I testified at the confirmation hearing concerning the mechanics of a very complicated plan of reorganization, creditor recoveries under the plan at various debtors, intercompany claim treatment and best interest test.



EXHIBIT 1

Curriculum Vitae of Robert S. Bingham, CIRA

- Prime Motor Inns, Inc. – Co-Chief Financial Officer, 1990 through 1993

Prime Motor Inns, Inc. was the holding company for a group of hotel-owning subsidiaries. My responsibilities included plan development, recovery model preparation, claims reconciliation (each of which involved analysis of the treatment of intercompany claims) and supervision of the treasury, budget, insurance and tax departments. I testified concerning certain assets sales and specific claims resolutions.

Expert Report

- In August 2011, I issued an expert report in an adversarial proceeding (Adv. Pro. No. 2:10-CV-198-MHT) related to the Colonial Bancgroup, Inc. chapter 11 bankruptcy for the Middle District of Alabama Case No. 2:10-cv-00409-MHT-WC (Bankr. Case No. 09-32303 (DHW)). My opinions and observations expressed in this report related to the treatment of intercompany transactions pursuant to a corporate tax sharing agreement.

Additional Experience – Bankruptcies and Public Accounting

- In addition to the above referenced bankruptcies, I have provided financial advisory services in bankruptcy matters including New Stream, New York Racing Association, Blue Bird, Sunbeam Corporation, and the Washington Group. I began my career in public accounting, serving as an auditor with Ernst & Young for 9 years.

Education & Certifications

- B.S. in mathematics from Trinity College, Hartford, Ct.
- M.B.A. from the Amos Tuck School at Dartmouth College
- Certified Insolvency and Restructuring Advisor (CIRA) program
- Numerous continuing education programs from 1976 forward to maintain CPA (now Inactive) and CIRA credentials

Professional Affiliations, Activities & Awards

- Member, Association of Insolvency & Restructuring Advisors; Board member for more than 6 years (AIRA)
- 2002 Gold Medal winner on CIRA Exam
- Frequent panelist at AIRA Annual Conference on topical issues, e.g., *Treatment of Intercompany Claims*, 2011; *Ethics for Financial Advisors*, 2009, 2008



EXHIBIT 1

Curriculum Vitae of Robert S. Bingham, CIRA

Teaching Experience

- CIRA course Part II (Bankruptcy Plan Development): 2009, 2010 and 2011
- CIRA course Part III (Bankruptcy Accounting and Reporting Issues and Taxes): 2009 and 2010.

Bates # / File Name	Docket #	Document Description	Category
001-EXAM00220919			Other
002-EXAM00220938			Other
003-EXAM00220948			Other
004-EXAM00220949		Timeline of key events 2007 to 2012; including notes on debt forgiveness	Bankruptcy Filings & Background Information
005-EXAM00220955		Debt Forgiveness by Asset Silo	Internal & External Financial Statements
006-EXAM00220956			Other
007-EXAM00221011			Other
008-EXAM00221012			Other
009-EXAM00221053			Other
010-EXAM00221452			Other
011-EXAM00221453			Other
012-EXAM00221454			Other
013-EXAM00221458		A/P file includes Intercompany Partner RC item	Internal & External Financial Statements
014-EXAM00221459			Other
015-EXAM00221460			Other
016-EXAM00221475			Other
017-EXAM00221485			Other
018-EXAM00221497			Other
019-EXAM00221498			Other
020-EXAM00221499			Other
021-EXAM00221509			Other
022-EXAM00221518		Settlement Credit Model, reference forgiveness	Internal & External Financial Statements
023-EXAM00221519			Other
024-EXAM00221529		Terms of Support Relating to Possible DOJ/State Attorney's General Settlement, Includes Form Of Debt Forgiveness Letter, 1/30/2012	Legal
025-EXAM00221558			Other
026-EXAM00221559			Other
027-EXAM00221563			Other
028-EXAM00221565			Other
029-EXAM00221577			Other
030-EXAM00221579		Interco Interest Summary	Internal & External Financial Statements
031-EXAM00221580			Other
032-EXAM00221838		Illustrative Waterfall Analysis Asset & Liabilities Input with intercompany	Internal & External Financial Statements
033-EXAM00221839			Other
034-EXAM00221840			Other
035-EXAM00221841			Other
036-EXAM00221844			Other
037-EXAM00221847			Other
038-EXAM00221850			Other
039-EXAM00221851		All Consolidated Entities Balance Sheet Trial Balance Reporting Period 2007 as of 1/25/2008	Internal & External Financial Statements
040-EXAM00221852			Other
041-EXAM00221854			Other
042-EXAM00221855			Other
043-EXAM00221856			Other
044-EXAM00221857			Other
045-EXAM00221858			Other
046-EXAM00221859			Other
047-EXAM00221860			Other
048-EXAM00221861			Other

Bates # / File Name	Docket #	Document Description	Category
049-EXAM00221862		Debt Forgiveness Schedule for the years: 2007, 2008, 2009	Internal & External Financial Statements
050-EXAM00221863			Other
051-EXAM00221866			Other
052-EXAM00228748			Other
053-EXAM00229653			Other
054-EXAM00229654			Other
055-EXAM00229655			Other
056-EXAM00229659		Related Party Footnotes for the years: 2006 - 2011	Internal & External Financial Statements
057-EXAM00229660			Other
058-EXAM00229664			Other
059-EXAM00229668			Other
060-EXAM00229672			Other
061-EXAM00229675			Other
062-EXAM00229681			Other
063-EXAM00229953			Other
064-EXAM00229954			Other
065-EXAM00229955			Other
066-EXAM00229956			Other
067-EXAM00229957			Other
068-EXAM00229958			Other
069-EXAM00229959			Other
070-EXAM00229960			Other
071-EXAM00230933		Draft - 24 Month DIP and Wind-Down Analysis, 1/22/2012	Bankruptcy Filings & Background Information
072-EXAM00230986		Draft - 24 Month DIP and Wind-Down Analysis, 1/22/2012	Bankruptcy Filings & Background Information
073-EXAM00231039			Other
076-EXAM00231093			Other
077-EXAM00231094			Other
078-EXAM00231095			Other
079-EXAM00231101			Other
080-EXAM00231105			Other
081-EXAM00231109			Other
082-EXAM00231114			Other
083-EXAM00232588			Other
084-EXAM00232589			Other
085-EXAM00232590			Other
086-EXAM00232591			Other
087-EXAM00232592			Other
088-EXAM00232593			Other
089-EXAM00232594			Other
090-EXAM00232595			Other
091-EXAM00232596			Other
092-EXAM00232597			Other
093-EXAM00232598			Other
094-EXAM00232599			Other
095-EXAM00232600			Other
096-EXAM00232601			Other
097-EXAM00232602			Other
098-EXAM00232603			Other

Bates # / File Name	Docket #	Document Description	Category
099-EXAM00232604			Other
100-EXAM00232605			Other
101-EXAM00232606			Other
102-EXAM00232607			Other
103-EXAM00232608			Other
104-EXAM00232639			Other
105-EXAM00232669			Other
106-EXAM00232699			Other
107-EXAM00232730			Other
108-EXAM00232761			Other
109-EXAM00232785			Other
110-EXAM00232809			Other
111-EXAM00232833			Other
112-EXAM00232858			Other
113-EXAM00232883			Other
114-EXAM00232907			Other
115-EXAM00232931			Other
116-EXAM00232947			Other
117-EXAM00232962			Other
118-EXAM00232976			Other
119-EXAM00232989			Other
120-EXAM00233003			Other
121-EXAM00233016			Other
122-EXAM00233017			Other
123-EXAM00233018			Other
124-EXAM00233019			Other
125-EXAM00233020			Other
126-EXAM00233021			Other
127-EXAM00233022			Other
128-EXAM00233023			Other
129-EXAM00233024			Other
130-EXAM00233027			Other
131-EXAM00233029			Other
132-EXAM00233100			Other
133-EXAM00233174			Other
134-EXAM00233176		Unaudited Consolidated Balance Sheet for periods ending: 6/30/2012 and 6/30/2011	Internal & External Financial Statements
135-EXAM00233178		ResCap Consolidation - Income Tax return ending 12/31/2009	Tax Returns
136-EXAM00233263		ResCap Consolidation - Income Tax return ending 12/31/2010	Tax Returns
137-EXAM00233517		ResCap Consolidation - Income Tax return ending 12/31/2011	Tax Returns
138-EXAM00233352			Other
139-EXAM00233353			Other
140-EXAM00233374		Audited Non-Consolidated Financial Statements of GMAC Residential Funding of Canada, Limited as of 12/31/2009	Internal & External Financial Statements
141-EXAM00233396		Audited Non-Consolidated Financial Statements of GMAC Residential Funding of Canada, Limited as of 12/31/2008	Internal & External Financial Statements
142-EXAM00233423		Audited Non-Consolidated Financial Statements of GMAC Residential Funding of Canada, Limited as of 12/31/2007	Internal & External Financial Statements
143-EXAM00233957			Other
144-EXAM00233958			Other
145-EXAM00233959			Other
146-EXAM00233960			Other

Bates # / File Name	Docket #	Document Description	Category
147-EXAM00233970			Other
148-EXAM00233971			Other
149-EXAM00233972			Other
150-EXAM00233973			Other
151-EXAM00233961			Other
152-EXAM00233968			Other
153-EXAM00233969			Other
154-EXAM00233976			Other
155-EXAM00233977			Other
156-EXAM00233978			Other
157-EXAM00233979			Other
158-EXAM00233980			Other
159-EXAM00233981			Other
160-EXAM00233982			Other
161-EXAM00233983			Other
162-EXAM00233984			Other
163-EXAM00233985			Other
164-EXAM00233986			Other
165-EXAM00233987			Other
166-EXAM00233988			Other
1679_001		Letter written to Richard of Collura of Zolfo Cooper confirming delivery of external hard drive of documents below	General Ledger Transactional Data
167-EXAM00233989			Other
168-EXAM00233990			Other
169-EXAM00233991			Other
170-EXAM00233992			Other
171-EXAM00233993			Other
172-EXAM00233994			Other
173-EXAM00233995			Other
174-EXAM00233996			Other
175-EXAM00233997			Other
176-EXAM00233998			Other
177-EXAM00233999			Other
178-EXAM00234000			Other
179-EXAM00234001			Other
180-EXAM00234002			Other
181-EXAM00234003			Other
182-EXAM00234004		Audited Consolidated Financial Statements of GMAC Mortgage, LLC as of 12/31/2006	Internal & External Financial Statements
183-EXAM00234058		Audited Consolidated Financial Statements of GMAC Mortgage, LLC as of 12/31/2007	Internal & External Financial Statements
184-EXAM00234112		Audited Consolidated Financial Statements of GMAC Mortgage, LLC as of 12/31/2008	Internal & External Financial Statements
185-EXAM00234189		Audited Consolidated Financial Statements of GMAC Mortgage, LLC as of 12/31/2009	Internal & External Financial Statements
186-EXAM00234281		Audited Consolidated Financial Statements of GMAC Mortgage, LLC as of 12/31/2011	Internal & External Financial Statements
187-EXAM00234350		Audited Consolidated Financial Statements of GMAC Mortgage, LLC as of 12/31/2010	Internal & External Financial Statements
188-EXAM00234413			Other
189-EXAM00234414			Other
190-EXAM00234415			Other
191-EXAM00234416			Other
192-EXAM00234417			Other
193-EXAM00234418			Other

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194-EXAM00234419			Other
195-EXAM00234420			Other
196-EXAM00234421			Other
197-EXAM00234422			Other
198-EXAM00234423			Other
199-EXAM00234424			Other
200-EXAM00234425			Other
201-EXAM00234426			Other
202-EXAM00234427			Other
203-EXAM00234428			Other
204-EXAM00234429			Other
205-EXAM00234430			Other
207-EXAM00234462			Other
208-EXAM00237709			Other
209-EXAM00237710			Other
210-EXAM00237711			Other
211-EXAM00237712			Other
212-EXAM00237715			Other
213-EXAM00237716			Other
214-EXAM00237717			Other
215-EXAM00237718			Other
216-EXAM00237719			Other
217-EXAM00237720			Other
218-EXAM00237721			Other
219-EXAM00237722			Other
220-EXAM00237723			Other
221-EXAM00237724			Other
222-EXAM00237725			Other
223-EXAM00237726			Other
224-EXAM00237727			Other
225-EXAM00237728			Other
226-EXAM00237729			Other
227-EXAM00237730			Other
228-EXAM00237731			Other
229-EXAM00237732			Other
230-EXAM00237733			Other
231-EXAM00237734			Other
232-EXAM00237735			Other
233-EXAM00237736			Other
234-EXAM00237737			Other
235-EXAM00237738			Other
236-EXAM00237739			Other
237-EXAM00237740			Other
238-EXAM00237741			Other
239-EXAM00237742			Other
240-EXAM00237743			Other
241-EXAM00237744			Other
242-EXAM00237745			Other

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243-EXAM00237746			Other
244-EXAM00237747			Other
245-EXAM00237748			Other
246-EXAM00237749			Other
247-EXAM00237750			Other
248-EXAM00237751			Other
249-EXAM00237752			Other
250-EXAM00237753			Other
251-EXAM00237754			Other
252-EXAM00237755			Other
253-EXAM00237756			Other
254-EXAM00237757			Other
255-EXAM00237758			Other
256-EXAM00237759			Other
257-EXAM00237760			Other
258-EXAM00237761			Other
259-EXAM00237762			Other
260-EXAM00237763			Other
261-EXAM00239387			Other
262-EXAM00239388			Other
263-EXAM00267946			Other
264-EXAM00267959			Other
265-EXAM00267972			Other
266-EXAM00267985			Other
267-EXAM00267998			Other
268-EXAM00268011		Debt Forgiveness Transactions from 1/1/2008 - 5/13/2012 (Petition)	Internal & External Financial Statements
269-EXAM00268012			Other
270-EXAM00295528			Other
271-EXAM00295529			Other
272-EXAM00295553			Other
273-EXAM00295557			Other
274-EXAM00295573			Other
275-EXAM00295589		Operating Agreement.pdf, references IC notes	Legal
276-EXAM00295603			Other
277-EXAM00295615			Other
278-EXAM00295633			Other
279-EXAM00295653			Other
280-EXAM00295670			Other
281-EXAM00295688			Other
282-EXAM00295692			Other
283-EXAM00295701			Other
284-EXAM00295706			Other
285-EXAM00295710			Other
286-EXAM00295721			Other
287-EXAM00295725			Other
288-EXAM00295735			Other
289-EXAM00295738			Other
290-EXAM00295743			Other

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291-EXAM00295752			Other
292-EXAM00295756			Other
293-EXAM00295760			Other
294-EXAM00295768			Other
295-EXAM00295772			Other
296-EXAM00295776			Other
297-EXAM00295781			Other
298-EXAM00295783			Other
299-EXAM00295790			Other
300-EXAM00295848			Other
301-EXAM00295860			Other
302-EXAM00295870			Other
303-EXAM00295872			Other
304-EXAM00295875			Other
305-EXAM00295883			Other
306-EXAM00295887			Other
307-EXAM00295892			Other
308-EXAM00295902			Other
309-EXAM00295958			Other
310-EXAM00295971			Other
311-EXAM00295973			Other
312-EXAM00295983			Other
313-EXAM00295985			Other
314-EXAM00295992			Other
315-EXAM00296000			Other
316-EXAM00296004			Other
317-EXAM00296009			Other
318-EXAM00296017			Other
319-EXAM00296034			Other
320-EXAM00296035			Other
321-EXAM00296059			Other
322-EXAM00296063			Other
323-EXAM00296294			Other
324-EXAM00296301			Other
325-EXAM00296305			Other
326-EXAM00296316			Other
327-EXAM00296345			Other
328-EXAM00296350			Other
329-EXAM00296352			Other
330-EXAM00296353			Other
331-EXAM00296359			Other
332-EXAM00296509			Other
333-EXAM00296515			Other
334-EXAM00296615			Other
335-EXAM00296706			Other
336-EXAM00329293			Other
337-EXAM00329295			Other
338-EXAM00329296			Other

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339-EXAM00338622			Other
340-EXAM00338623		Loan Level reimbursement from 4/2012 - 1/2013, 2nd Lien Extinguishment	Internal & External Financial Statements
EXAM10362089		Debt Forgiveness Procedures	Email and Memo Communications
EXAM00107204		Note Certificate & Viaduct (No. 7) Limited	Other
EXAM00107205		Note Issuance Facility Deed	Other
EXAM00125358		GMAC Residential Folding Company, LLC Consolidated Financial Statements as of and for years ended Dec. 31, 2007 and 2006	Internal & External Financial Statements
EXAM00125417		Homecomings Financial, LLC Consolidated Financial Statements for the Years Ended December 31, 2006	Internal & External Financial Statements
EXAM00125624		GMAC Residential Holding Company, LLC Consolidated Financial Statements as of and for the years ended Dec. 31, 2006 and 2005	Internal & External Financial Statements
EXAM00125685		GMAC Residential Holding Corp. Consolidated Financial Statements as of and for the years ended Dec. 31, 2005 and 2004 (Restated)	Internal & External Financial Statements
EXAM00221003		Memo from Westman, B. to Disclosure Committee re: Q4 2011 ResCap Disclosure Committee Meeting Minutes	Email and Memo Communications
EXAM10184779		Letter to PricewaterhouseCoopers LLP re: Audits of the Combined Financial Statements of Residential Capital Corporation as of Dec. 31, 2004 and 2003	Email and Memo Communications
EXAM10490749		Email from Barberot, D. to Lombardo, J. re GMAC BoD Meeting Materials	Email and Memo Communications
EXAM10755596		Email from Hahn, R. to Corrigan, L. among other re SOX Control - Verification of Intercompany Transactions	Email and Memo Communications
EXAM10755597		RFG Intercompany Eliminations - Eliminations Between Resi/Bank (Smartstream) and RFC (PeopleSoft) Legal Entities Master List	Other
EXAM11944646		GMAC Residential Holding Corp Consolidated Financial Statements as of and for the years ended December 31, 2003 and 2002	Other
EXAM12263381		Email from Westman, B. to Stern, J. and Renzi, M. re: Waterfall Questions	Email and Memo Communications
EXAM12412896		Email from Dondzila, C. to Westman, B. re: RFC/ResCap Receivable Support Memo	Email and Memo Communications
EXAM12431944		Email from Dondzila, C. to Shapiro, D. re: Heads Up - GMAC Mortgage Agency Covenants	Email and Memo Communications
6-28-13 Answer And Counterclaims - Unredacted Final		Answer, Affirmative Defenses And Counterclaims Of Defendants Umb Bank, N.A. And The Ad Hoc Group Of Junior Secured Noteholders To Debtors' First Amended Complaint To Determine Extent Of Liens And For Declaratory Judgment	Bankruptcy Filings & Background Information
Adversary Complaint For Declaratory Judgment	3069	Adversary Complaint For Declaratory Judgment, Avoidance Of Liens, And Disallowance Of Claims	Bankruptcy Filings & Background Information
AFJUSN_0121091		ResCap Consolidation - Income Tax return ending 11/30/2006	Tax Returns
AFJUSN_0121092		ResCap Consolidation - Income Tax return ending 11/30/2006	Tax Returns
AFJUSN_0121093		ResCap Consolidation - Income Tax return ending 11/30/2006	Tax Returns
AFJUSN_0121094		ResCap Consolidation - Income Tax return ending 12/31/2006	Tax Returns
ALLY_0044635			Other
ALLY_0172540		GMAC, LLC- Return of Partnership Income ending 2007	Tax Returns
ALLY_0173635		GMAC, LLC- Return of Partnership Income ending 2008	Tax Returns
ALLY_0173654		GMAC, LLC- Return of Partnership Income ending 2008	Tax Returns
ALLY_0173687		GMAC, LLC- Return of Partnership Income ending 2008	Tax Returns
ALLY_0173738		GMAC, LLC - Reportable Transaction Disclosure Statement ending 12/31/2007	Tax Returns
ALLY_0173763		Ally Financial Inc. & Subsidiaries - Income Tax return ending 2010	Tax Returns
ALLY_0175031		GMAC, LLC- Return of Partnership Income ending 2009	Tax Returns
ALLY_0176077		GMAC, LLC - Information Return of U.S. Persons with Respect to Certain Foreign Confirmations ending 2009	Tax Returns
ALLY_0176269		GMAC, LLC - Information Return of U.S. Persons with Respect to Certain Foreign Confirmations ending 2009	Tax Returns
ALLY_0176426		GMAC, LLC- Return of Partnership Income ending 2006	Tax Returns
ALLY_0177397		GMAC, LLC - DC Tax Return 2008	Tax Returns
ALLY_0177399		GMAC, LLC - IL Tax Return 2008	Tax Returns
ALLY_0177402		GMAC, LLC - ND Tax Return 2008	Tax Returns
ALLY_0177405		GMAC, LLC - SD Tax Return 2008	Tax Returns
ALLY_0177410		GMAC, LLC - TN Tax Return 2008	Tax Returns
ALLY_0177416		GMAC, LLC - WV Tax Return 2008	Tax Returns
ALLY_0177428		GMAC, LLC - DC Tax Return 2008	Tax Returns
ALLY_0177430		GMAC, LLC - IL Tax Return 2008	Tax Returns
ALLY_0177433		GMAC, LLC - ND Tax Return 2008	Tax Returns

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ALLY_0177436		GMAC, LLC - SD Tax Return 2008	Tax Returns
ALLY_0177441		GMAC, LLC - TN Tax Return 2008	Tax Returns
ALLY_0177447		GMAC, LLC - WV Tax Return 2008	Tax Returns
ALLY_0208426		GMAC, LLC - NH Tax Return 2006	Tax Returns
ALLY_0208478		Ally Financial Inc. & Subsidiaries - ALLOCATION OF 12.31.11 TAX LIABILITY	Tax Returns
ALLY_0208479		G/L Acct No. 281132001 - Accrued US State and Local inc taxes - prior years	Tax Returns
ALLY_0208480		G/L Acct No. 281132001 - Accrued US State and Local inc taxes - prior years	Tax Returns
ALLY_0208481		All Account Reconciliation 12/31/2011 - Accrued US State and Local inc taxes - prior years	Tax Returns
ALLY_0208482		System Export -Journal Entries	Internal & External Financial Statements
ALLY_0208485		Intercompany Settlement - 5Q11 (2011 Extension)	Internal & External Financial Statements
ALLY_0208486		Intercompany Settlement - 4Q11	Internal & External Financial Statements
ALLY_0208487		Memo from Ally re: Tax Payments due from GMAC Insurance Holdings Inc. to Ally Financial Inc., date 4/18/11	Email and Memo Communications
ALLY_0208490		Ally Financial Inc. & Subs - Income Tax return ending 12/31/2011	Tax Returns
ALLY_0209096			Other
ALLY_0209100		Tax Payment Records - Q311 and Q411 tax payment from GMAC Insurance to Ally Financial	Tax Returns
ALLY_0242821		Accounting Policy 1040 Intercompany Accounting (Effective Jan 1, 2010)	Other
ALLY_0242959		Accounting Policy 1040 Intercompany Accounting (Effective Jan. 1, 2011)	Other
ALLY_0276171		Email from Malloy, J. to Peterson, J. among other re: ResCap Daily Recap/Liquidity Rollforward - 11/13/08	Email and Memo Communications
ALLY_0276172		ResCap Daily Liquidity Rollforward	Other
ALLY_0287162_email			Other
ALLY_0287163			Other
ALLY_0297136			Other
ALLY_0297137			Other
ALLY_0301438			Other
ALLY_0301439			Other
ALLY_0311783		GMAC ResCap Treasury Monthly Reports (July 2008)	Internal & External Financial Statements
ALLY_0336317		ResCap Consolidation - Income Tax return ending 12/31/2011	Tax Returns
ALLY_0336757		Residential Capital, LLC Consolidated Financial Statements for the Years ended December 31, 2011 and 2010	Internal & External Financial Statements
ALLY_0337021		ETS of Virginia - Income Tax return ending 12/31/2011	Tax Returns
ALLY_0337039		ResCap Consolidation - Income Tax return ending 12/31/2010	Tax Returns
ALLY_0337325		ResCap Consolidation - Income Tax return ending 12/31/2009	Tax Returns
ALLY_0337409		ResCap Consolidation - Capital Gains & Losses ending 12/31/2009	Tax Returns
ALLY_0337524		ResCap Consolidating Schedules	Tax Returns
ALLY_0337795		ResCap, LLC- Return of Partnership Income ending 2009	Tax Returns
ALLY_0337807		ResCap, LLC- Schedule C of Form 1065 ending 2009	Tax Returns
ALLY_0337941		ResCap, LLC- Form 8916-A ending 2009	Tax Returns
ALLY_0388745		Ally Financial Inc. & Subs - Income Tax return ending 12/31/2009	Tax Returns
ALLY_0390037		GMAC, LLC- Return of Partnership Income ending 2008	Tax Returns
Cash Management Motion	16	Debtors' Motion For Order Under Bankruptcy Code Sections 105(A), 345, 363, 364, And 503(B)(1) And Bankruptcy Rules 6003 And 6004 Authorizing (I) Continued Use Of Cash Management Services And Practices, (II) Continued Use Of Existing Bank Accounts, Checks, And Business Forms, (III) Implementation Of Modified Cash Management Procedures, (IV) Interim Waiver Of The Investment And Deposit Requirements Of Bankruptcy Code Section 345, (V) Debtors To Honor Specified Outstanding Prepetition Payment Obligations, (VI) Continuation Of Intercompany Transactions, Including Intercompany Transactions With Future Debtors, And Granting Administrative Expense Status To Intercompany Claims, And (VII) Scheduling A Final Hearing On The Relief Requested	Bankruptcy Filings & Background Information
Complaint To Determine Extent Of Liens	3592	Complaint To Determine Extent Of Liens And For Declaratory Judgment	Bankruptcy Filings & Background Information
Disclosure Statement	4157	Disclosure Statement For The Joint Chapter 11 Plan Proposed By Residential Capital, Lilac, Et Al. And The Official Committee Of Unsecured Creditors	Bankruptcy Filings & Background Information
Revised Disclosure Statement	4733	Revised Disclosure Statement	Bankruptcy Filings & Background Information
Doc Requests			Other

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Document Requests to Debtors (4822-9311-1317-3)			Other
Document Requests to Debtors (4822-9311-1317-3) ZC			Other
DT000673			Other
DT002796			Other
DT003621			Other
DT005538			Other
EXAM00107022		ResCap-RAHI Intercompany Advance Agreement as of 6/1/09	Legal
EXAM00107030		Homecomings-RFC A&R Intercompany Agreement as of 6/30/06	Legal
EXAM00107037		ResCap Restated Loan Agreement as of 1/1/2006	Legal
EXAM00107300		Passive Asset Transactions Intercompany Advance Agreement as of 6/1/09	Legal
EXAM00122166		Audited Consolidated Financial Statements of Homecomings Financial, LLC as of 12/31/2008	Internal & External Financial Statements
EXAM00123277		Audited Financial Statements of Residential Funding Company, LLC as of 12/31/2010	Internal & External Financial Statements
EXAM00124670		Audited Financial Statements of Residential Funding Company, LLC as of 12/31/2009	Internal & External Financial Statements
EXAM00124988		Audited Financial Statements of Residential Funding Company, LLC as of 12/31/2008	Internal & External Financial Statements
EXAM00125159		Audited Financial Statements of Residential Funding Company, LLC as of 12/31/2007	Internal & External Financial Statements
EXAM00125452		Audited Financial Statements of Residential Funding Company, LLC as of 12/31/2006	Internal & External Financial Statements
EXAM00125738		Audited Consolidated Financial Statements of Homecomings Financial Network, Inc. as of 12/31/2005	Internal & External Financial Statements
EXAM00125930		Audited Consolidated Financial Statements of Homecomings Financial Network, Inc. as of 12/31/2004	Internal & External Financial Statements
EXAM00135471		Audited Consolidated Financial Statements of Homecomings Financial, LLC as of 12/31/2006	Internal & External Financial Statements
EXAM00229659			Other
EXAM00231095		Consolidated Trial Balance for 12/31/2008	Internal & External Financial Statements
EXAM00231096			Other
EXAM00231097		Resi Trial Balance for 12/31/2008	Internal & External Financial Statements
EXAM00231098		RFC Trial Balance for 12/31/2008	Internal & External Financial Statements
EXAM00231099			Other
EXAM00231100		Parent Trial Balance for 12/31/2008	Internal & External Financial Statements
EXAM00231101		Consolidated Trial Balance for 12/31/2011	Internal & External Financial Statements
EXAM00231102		Resi Trial Balance for 12/31/2011	Internal & External Financial Statements
EXAM00231103		Parent Trial Balance for 12/31/2011	Internal & External Financial Statements
EXAM00231104		RFC Trial Balance for 12/31/2011	Internal & External Financial Statements
EXAM00231105		Resi Trial Balance for 12/31/2010	Internal & External Financial Statements
EXAM00231106		RFC Trial Balance for 12/31/2010	Internal & External Financial Statements
EXAM00231107		Consolidated Trial Balance for 12/31/2010	Internal & External Financial Statements
EXAM00231108		Parent Trial Balance for 12/31/2010	Internal & External Financial Statements
EXAM00231109		RFC Trial Balance for 12/31/2009	Internal & External Financial Statements
EXAM00231110		Parent Trial Balance for 12/31/2009	Internal & External Financial Statements
EXAM00231111		Resi Trial Balance for 12/31/2009	Internal & External Financial Statements
EXAM00231112			Other
EXAM00231113		Consolidated Trial Balance for 12/31/2009	Internal & External Financial Statements
EXAM00268011		ResCap Debt Forgiveness Schedule 1/1/2008 - 5/13/2013	Internal & External Financial Statements
EXAM00345894		Draft - Debtors' Intercompany & Debt Forgiveness Presentation, 4/4/2013	Bankruptcy Filings & Background Information
EXAM10115822			Other
EXAM101158361637631			Other
EXAM10115846		From: Todd Block, to Tom Marano, Email on use of cash collateral, 2/4/2009	Email and Memo Communications
EXAM10115851			Other
EXAM10115885			Other
EXAM1015266			Other
EXAM10199064		ResCap Board of Directors Meeting - ResCap Review, 9/26/2007	Bankruptcy Filings & Background Information

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EXAM10362088		Debt Forgiveness Procedures	Email and Memo Communications
EXAM10362090		Debt Forgiveness Procedures	Bankruptcy Filings & Background Information
EXAM104432252513821			Other
EXAM10443226			Other
EXAM104907501706861			Other
EXAM10509272		Cash Management System Work Plan	Internal & External Financial Statements
EXAM11144172			Other
EXAM11144174			Other
EXAM11148007			Other
EXAM11148024		From: Tammy Hamzehpour, to Tom Marano & James Young, Intercompany debt forgiveness email, 3/22/2010	Email and Memo Communications
EXAM11150308			Other
EXAM11150309			Other
EXAM11150310			Other
EXAM11195215			Other
EXAM11195581		From: James Young, To: Jill Horner, Intercompany balance increases, 11/17/2010	Email and Memo Communications
EXAM11195706		From: James Young, To: Cathy Dondzila, Forgiven borrowings email, 4/20/2010	Email and Memo Communications
EXAM111959421431997			Other
EXAM11196051		From: James Young, To: Jill Horner, Debt forgiven email, 10/20/2010	Email and Memo Communications
EXAM11316929		From: James Young, To: Jim Jones and Tammy H, ResCap Debt Forgiveness to RFC - Subsidiary Capital need, 3/20/2008	Email and Memo Communications
EXAM11316941			Other
EXAM12263417		Note Issuance Facility Deed: Viaduct No. 7 as SPE, ResCap as Note Purchaser	Legal
EXAM12263518		From: Mark Renzi, 2013-04-23 Intercompany and OID Discussion	Email and Memo Communications
EXAM12431943		From: Cathy Dondzila, To: Dina Shapiro, Net Worth covenants email, 6/26/2009	Email and Memo Communications
EXAM20118572			Other
EXAM20118573			Other
EXAM20144871			Other
EXAM30006774		Report of Examination of GMAC Mortgage, LLC, as of 12/31/2009	Legal
PWC_001_1_00000021		Sarbanes Oxley, Mega Process: Cash Management, Sub-process: Bank Administration (Revised 8/19/2008)	Other
PWC_001_1_00000023		Sarbanes Oxley, Mega Process: Cash Management, Sub-process: Bank Administration (Revised 8/6/2009)	Other
PWC_001_1_00000053		Sarbanes Oxley, Mega Process: Cash Management, Sub-Process: Funds Transfer Process - Quantum (Revised 8/26/2008)	Other
PWC_001_1_00000056		Test Inter-company Elimination of Cash	Other
PWC_001_1_00000080		Sarbanes Oxley, Mega Process: Cash Management, Sub-process: Funds Transfer Process - WebSeries (Revised 8/19/2008)	Other
PWC_001_1_00000129		Sarbanes Oxley, Mega Process: Cash Management, Sub-process: Funds Transfer Process - WebSeries (Revised 10/28/2009)	Other
PWC_001_1_00000154		Sarbanes Oxley Mega Process: Cash Management Sub-process: ResCap Funds Transfer Process – Quantum	Email and Memo Communications
PWC00000056			Other
PWC00690			Other
PWC07231			Other
PWC07321		Description of Intercompany or Related-Party Transactions	Internal & External Financial Statements
PWC07709			Other
PWC07746			Other
PWC07810			Other
PWC07818		Trial balance detail on IC, Dec. 2007	Internal & External Financial Statements
PWC07820		Trial balance detail on IC, Dec. 2007	Internal & External Financial Statements
PWC07842		Trial balance detail on GMAC Mortgage Group IC, Dec. 2008	Internal & External Financial Statements
PWC07893			Other
PWC07895			Other

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PWC08278		Memo from Tax Team/McLean to Files/McLean re: ResCap LLC Conversion	Email and Memo Communications
PWC08437		Spreadsheet re: Flume, Warehouse Lending, GMAC LOC	Other
PWC08576		Spreadsheet re: Transactions Descriptions between Entities	Other
PWC07079			Other
PWC07082			Other
PWC07083			Other
PWC07084			Other
PWC07088			Other
PWC07093			Other
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PWC07109			Other
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PWC07128			Other
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PWC07142			Other
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PWC07191			Other
PWC07204			Other
PWC07207			Other
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PWC07222			Other
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PWC07224			Other
PWC07228			Other

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PWC07231			Other
PWC07232			Other
PWC07233			Other
PWC07234			Other
PWC07235			Other
PWC07261			Other
PWC07263			Other
PWC07265			Other
PWC07267			Other
PWC07272			Other
PWC07273			Other
PWC07281			Other
PWC07282			Other
PWC07291			Other
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PWC07301			Other
PWC07306			Other
PWC07308			Other
PWC07310			Other
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PWC07314			Other
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PWC07414			Other
PWC07417			Other
PWC07421			Other
PWC07422			Other
PWC07423			Other
PWC07426			Other
PWC07444			Other
PWC07451			Other
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PWC07479			Other
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PWC07558			Other
PWC07563			Other

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PWC07691			Other
PWC07692			Other
PWC07693			Other
PWC07694			Other
PWC07697			Other
PWC07703			Other
PWC07709			Other
PWC07710			Other
PWC07736			Other
PWC07745			Other
PWC07746			Other
PWC07747			Other
PWC07751			Other
PWC07752			Other
PWC07754			Other
PWC07755			Other
PWC07756			Other
PWC07757			Other
PWC07758			Other
PWC07759			Other
PWC07761			Other
PWC07766			Other
PWC07780			Other
PWC07794			Other
PWC07802			Other
PWC07803			Other
PWC07805			Other
PWC07807			Other
PWC07809			Other
PWC07814			Other
PWC07818			Other
PWC07819			Other
PWC07820			Other
PWC07821			Other
PWC07822			Other
PWC07823			Other
PWC07827			Other
PWC07828			Other
PWC07829			Other
PWC07830			Other
PWC07831			Other
PWC07832			Other
PWC07833			Other
PWC07834			Other
PWC07839			Other
PWC07841			Other
PWC07842			Other
PWC07843			Other

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PWC07846			Other
PWC07849			Other
PWC07850			Other
PWC07851			Other
PWC07852			Other
PWC07853			Other
PWC07888			Other
PWC08305			Other
PWC08309			Other
PWC09029			Other
PWC09031			Other
PWC09035			Other
RC00034684		Audited Consolidated Financial Statements of Homecomings Financial, LLC as of 12/31/2007	Internal & External Financial Statements
RC40000001		Accounting Policy 1005 Creation, Approval, and Maintenance of Accounting Policies	Other
RC40000010			Other
RC40000035		Accounting Policy 1020 Financial Guarantees	Other
RC40000056		Accounting Policy 1025 Accounting Changes and Error Corrections	Other
RC40000082		Ally Accounting Policy 1030: Offsetting And Netting	Internal & External Financial Statements
RC40000099		Accounting Policy 1035 General Contingencies	Other
RC40000118		Ally Accounting Policy 1040: Intercompany Accounting	Internal & External Financial Statements
RC40000138			Other
RC40000173			Other
RC40000202		Accounting Policy 1060 Fair Value Measurement	Other
RC40000254		Accounting Policy 1065 The Fair Value Option	Other
RC40000275			Other
RC40000342		Ally Accounting Policy 1075: Related Party	Internal & External Financial Statements
RC40000361			Other
RC40000403			Other
RC40000421			Other
RC40000439		Accounting Policy 1205 Subsequent Events	Other
RC40000450		Accounting Policy 2055 Cash and Cash Equivalents	Other
RC40000462		Accounting Policy 2105 Retained Interests	Other
RC40000498			Other
RC40000536		Ally Accounting Policy 2115: Cost, Equity Method, And Consolidation Accounting	Internal & External Financial Statements
RC40000585			Other
RC40000608		Accounting Policy 2220 Loan and Lease Charge-Offs	Other
RC40000620		Global Nonaccrual Loans Policy: Accounting Policy 2255	Other
RC40000640		Accounting Policy 2260 Lending & Finance Receivables	Other
RC40000660		Accounting Policy 2270 Loan Modifications and Troubled Debt Restructurings	Other
RC40000689		Accounting Policy 2275 Purchased Distressed Loans & Securities	Other
RC40000718			Other
RC40000763		Global Allowance for Credit Losses Policy: Accounting Policy 2305	Other
RC40000790		Accounting Policy 2315 Reverse for Assets Sold with Recourse	Other
RC40000802		Accounting Policy 2451 Mortgage Servicing Rights	Other
RC40000823		Accounting Policy 2601 Fixed Assets	Other
RC40000839		Accounting Policy 2602 Software & Development Cost	Other
RC40000857		Accounting Policy 2650 Repossessed and Foreclosed Assets and Other Real Estate Owned	Other
RC40000876		Accounting Policy 2715 Goodwill	Other

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RC40000900		Accounting Policy 2725 Intangible Assets	Other
RC40000916			Other
RC40000936		Accounting Policy 2740 Loan Premiums, Discounts, and Deferred Fees or Costs	Other
RC40000953			Other
RC40001003		Accounting Policy 2905 Impairment of Long-Lived Assets (To be Held and Used)	Other
RC40001021			Other
RC40001043		Accounting Policy 4105 Preferred Stock	Other
RC40001058		Accounting Policy 5205 Insurance Accounting and Reporting	Other
RC40001092		Accounting Policy 5305 Advertising and Marketing	Other
RC40001105		Ally Accounting Policy 3055: Debt	Internal & External Financial Statements
RC40001136			Other
RC40001150		Accounting Policy 3310 Costs Associated with Exit or Disposal Activities	Other
RC40001174		Accounting Policy 3315 Employee Benefit Plans	Other
RC40001204		Accounting Policy 3320 Share Based Compensation	Other
RC40001269		Accounting Policy 3325 Accounting for Uncertain Tax Positions	Other
RC40001284		Accounting Policy 3330 Accounting for Income Taxes	Other
RC40001301		Accounting Policy 3405 Deposit Liabilities	Other
RC40001322		Accounting Policy 7105 Regulatory Capital	Other
RC40001369		Accounting Policy 7205 Average Daily Balance Policy	Other
RC40006523		Written Consent of the Executive Committee of ResCap, LLC for the Proposed Capital Infusion for GMAC-RFC Australia 3/31/2009	Legal
RC40006568		Debt Forgiveness from GMAC Residential Holding Company to GMAC Mortgage	Email and Memo Communications
RC40008678			Other
RCCUCCJSN20051023			Other
RCJSNII00003298		Intercompany Balances for February [Year Unknown]	Internal & External Financial Statements
RCJSNII00003299		Intercompany Balances for April and May [Year Unknown]	Internal & External Financial Statements
RCJSNII00003300		ResCap Consolidated - Intercompany Balances for period ending 1/31/2011	Internal & External Financial Statements
RCJSNII00003301		GMAC Mortgage Ops - External Reporting - Intercompany Accounts 1/31/2011	Internal & External Financial Statements
RCJSNII00003304		GMAC Mortgage Ops - External Reporting - Intercompany Accounts 2/28/2011	Internal & External Financial Statements
RCJSNII00003307		GMAC Mortgage Ops - External Reporting - Intercompany Accounts 3/31/2011	Internal & External Financial Statements
RCJSNII00003311		GMAC Mortgage Ops - External Reporting - Intercompany Accounts 4/30/2011	Internal & External Financial Statements
RCJSNII00003318		GMAC Mortgage Ops - External Reporting - Intercompany Accounts 6/30/11	Internal & External Financial Statements
RCJSNII00003322		GMAC Mortgage Ops - External Reporting - Intercompany Accounts 7/31/11	Internal & External Financial Statements
RCJSNII00003325		ResCap Consolidated - Intercompany Balances for period ending 8/31/2011	Internal & External Financial Statements
RCJSNII00003326		GMAC Mortgage Ops - External Reporting - Intercompany Accounts 8/31/2011	Internal & External Financial Statements
RCJSNII00003330		GMAC Mortgage Ops - External Reporting - Intercompany Accounts 9/30/2011	Internal & External Financial Statements
RCJSNII00003334		GMAC Mortgage Ops - External Reporting - Intercompany Accounts 10/31/2011	Internal & External Financial Statements
RCJSNII00003337		GMAC Mortgage Ops - External Reporting - Intercompany Accounts 11/30/2011	Internal & External Financial Statements
RCJSNII00003340		ResCap Intercompany Certification Document	Other
RCJSNII00003344		ResCap Intercompany Inventory Certification - 12/31/2011	Bankruptcy Filings & Background Information
RCJSNII00003350		ResCap Intercompany Inventory Certification - 12/31/2011	Bankruptcy Filings & Background Information
RCJSNII00003355		GMAC Mortgage Ops - External Reporting - Intercompany Accounts 12/31/2011	Internal & External Financial Statements
RCJSNII00003359		Intercompany Balances for April May and June [Year Unknown]	Internal & External Financial Statements
RCJSNII00003360		Intercompany Balances - ResCap, GMAC, RFC - 9/30/2012	Internal & External Financial Statements
RCJSNII00003361		Intercompany Balances - ResCap, GMAC, RFC - 7/31/2012	Internal & External Financial Statements
RCJSNII00003362		ResCap - Consolidated Intercompany Balance Information at 5/13/2012	Internal & External Financial Statements
RCJSNII00003363		Intercompany Balance - GMAC and ResCap at 1/31/2009	Internal & External Financial Statements
RCJSNII00003370		Intercompany Balance - GMAC, RFC and ResCap at 1/31/2009	Internal & External Financial Statements
RCJSNII00003371		Intercompany Balance - GMAC, RFC and ResCap at 1/31/2009	Internal & External Financial Statements

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RCJSNII00003372		Intercompany Balance - GMAC, RFC and ResCap at 1/31/2009	Internal & External Financial Statements
RCJSNII00003374		Intercompany Balance - GMAC, RFC and ResCap at 1/31/2009	Internal & External Financial Statements
RCJSNII00003376		Consolidated Intercompany Balance Information at 1/31/2009	Internal & External Financial Statements
RCJSNII00003377		Intercompany Balance details for GMAC including Collateral Silo Info - at 1/31/2009	Internal & External Financial Statements
RCJSNII00003379		Intercompany Balance - GMAC, RFC and ResCap at 2/28/2009	Internal & External Financial Statements
RCJSNII00003381		Intercompany Balance details for GMAC including Collateral Silo Info - at 2/28/2009	Internal & External Financial Statements
RCJSNII00003384		Intercompany Balance - GMAC and ResCap at 2/28/2009	Internal & External Financial Statements
RCJSNII00003387		Intercompany Balance - GMAC, RFC and ResCap at 3/31/2009	Internal & External Financial Statements
RCJSNII00003389		ResCap - Consolidated Intercompany Balance Information at 3/31/2009	Internal & External Financial Statements
RCJSNII00003390		ResCap - Consolidated Intercompany Balance Information at 3/31/2009	Internal & External Financial Statements
RCJSNII00003392		Intercompany Balance details for GMAC including Collateral Silo Info - at 3/31/2009	Internal & External Financial Statements
RCJSNII00003393		Intercompany Balance -RFC - 3/31/2009	Internal & External Financial Statements
RCJSNII00003396		Intercompany Balance -GMAC, Resi, RFC - 3/31/2009	Internal & External Financial Statements
RCJSNII00003399		ResCap - Consolidated Intercompany Balance Information at 4/30/2009	Internal & External Financial Statements
RCJSNII00003400		Intercompany Balance -RFC - 4/30/2009	Internal & External Financial Statements
RCJSNII00003401		Intercompany Balance -GMAC, ResMor, RFC - 4/30/2009	Internal & External Financial Statements
RCJSNII00003402			Other
RCJSNII00003403			Other
RCJSNII00003404		Intercompany Balance -RFC, Resi - 4/30/2009	Internal & External Financial Statements
RCJSNII00003405		Intercompany Balance -RFC Corp - 4/30/2009	Internal & External Financial Statements
RCJSNII00003406		Intercompany Balance -RFC - 4/30/2009	Internal & External Financial Statements
RCJSNII00003407			Other
RCJSNII00003408		Intercompany Balance -GMAC, ResCap, RFC - 4/30/2009	Internal & External Financial Statements
RCJSNII00003409		Intercompany Balance -GMAC, ResCap, RFC - 4/30/2009	Internal & External Financial Statements
RCJSNII00003410		Intercompany Balance -RFC, Resi - 4/30/2009	Internal & External Financial Statements
RCJSNII00003411		ResCap - Consolidated Intercompany Balance Information at 5/31/2009	Internal & External Financial Statements
RCJSNII00003412		Intercompany Balance -GMAC, ResMor, RFC - 5/31/2009	Internal & External Financial Statements
RCJSNII00003413		Intercompany Balance -GMAC, ResMor, RFC - 5/31/2009	Internal & External Financial Statements
RCJSNII00003414		Intercompany Balance -GMAC, ResMor, RFC - 5/31/2009	Internal & External Financial Statements
RCJSNII00003415			Other
RCJSNII00003416		Intercompany Balance - RFC, Resi - 5/31/2009	Internal & External Financial Statements
RCJSNII00003417		Intercompany Balance - GMAC, RFC Corp, Resi - 5/31/2009	Internal & External Financial Statements
RCJSNII00003418			Other
RCJSNII00003419		Intercompany Balance - RFC, ResMor, Resi - 5/31/2009	Internal & External Financial Statements
RCJSNII00003420		Intercompany Balance - RFC, Resi - 5/31/2009	Internal & External Financial Statements
RCJSNII00003421		Intercompany Balance - RFC, ResMor, Resi - 5/31/2009	Internal & External Financial Statements
RCJSNII00003422		Intercompany Balance - RFC, ResMor, Resi - 6/30/2009	Internal & External Financial Statements
RCJSNII00003423		ResCap - Consolidated Intercompany Balance Information at 6/30/2009	Internal & External Financial Statements
RCJSNII00003424		ResCap - Consolidated Intercompany Balance Information at 6/30/2009	Internal & External Financial Statements
RCJSNII00003425			Other
RCJSNII00003426		Intercompany Balance - GMAC, Resi - 6/30/2009	Internal & External Financial Statements
RCJSNII00003427		Intercompany Balance - GMAC, Resi - 6/30/2009	Internal & External Financial Statements
RCJSNII00003428		Intercompany Balance -GMAC, ResMor, RFC - 6/30/2009	Internal & External Financial Statements
RCJSNII00003429		Intercompany Balance - RFC, ResMor, Resi - 6/30/2009	Internal & External Financial Statements
RCJSNII00003430		Intercompany Balance - RFC, ResMor, Resi - 6/30/2009	Internal & External Financial Statements
RCJSNII00003431		Intercompany Balance - RFC, Resi - 6/30/2009	Internal & External Financial Statements
RCJSNII00003432		Intercompany Balance -GMAC, ResMor, RFC - 7/31/2009	Internal & External Financial Statements
RCJSNII00003433		ResCap - Consolidated Intercompany Balance Information at 7/31/2009	Internal & External Financial Statements

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RCJSNII00003434		ResCap - Consolidated Intercompany Balance Information at 7/31/2009	Internal & External Financial Statements
RCJSNII00003435		Intercompany Balance - GMAC, RFC, ResMor, Resi - 7/31/2009	Internal & External Financial Statements
RCJSNII00003436		Intercompany Balance - RFC, Resi - 7/31/2009	Internal & External Financial Statements
RCJSNII00003437		Intercompany Balance - RFC, Resi - 7/31/2009	Internal & External Financial Statements
RCJSNII00003438		Intercompany Balance - GMAC, RFC, ResMor, Resi - 7/31/2009	Internal & External Financial Statements
RCJSNII00003439		Intercompany Balance - GMAC, RFC, ResMor, Resi - 7/31/2009	Internal & External Financial Statements
RCJSNII00003440			Other
RCJSNII00003441			Other
RCJSNII00003442		Intercompany Balance - Resi, RFC - 7/31/2009	Internal & External Financial Statements
RCJSNII00003444		Intercompany Balance - GMAC, RFC, ResMor, Resi - 7/31/2009	Internal & External Financial Statements
RCJSNII00003445		Intercompany Balance - GMAC, RFC, ResMor, Resi - 8/31/2009	Internal & External Financial Statements
RCJSNII00003446		ResCap - Consolidated Intercompany Balance Information at 8/31/2009	Internal & External Financial Statements
RCJSNII00003447		ResCap - Consolidated Intercompany Balance Information at 8/31/2009	Internal & External Financial Statements
RCJSNII00003448		Intercompany Balance - GMAC, RFC, ResMor, Resi - 8/31/2009	Internal & External Financial Statements
RCJSNII00003449			Other
RCJSNII00003450		Intercompany Balance - RFC, Resi - 8/31/2009	Internal & External Financial Statements
RCJSNII00003451		Intercompany Balance - RFC, Resi - 8/31/2009	Internal & External Financial Statements
RCJSNII00003452		Intercompany Balance - GMAC, RFC, ResMor, Resi - 8/31/2009	Internal & External Financial Statements
RCJSNII00003453		Intercompany Balance - GMAC, RFC, ResMor, Resi - 8/31/2009	Internal & External Financial Statements
RCJSNII00003454		Intercompany Balance - GMAC, RFC, ResMor, Resi - 8/31/2009	Internal & External Financial Statements
RCJSNII00003455		Intercompany Balance - GMAC, RFC, ResMor, Resi - 8/31/2009	Internal & External Financial Statements
RCJSNII00003456		Intercompany Balance - RFC, Resi - 8/31/2009	Internal & External Financial Statements
RCJSNII00003457		Intercompany Balance - GMAC, RFC, ResMor, Resi - 8/31/2009	Internal & External Financial Statements
RCJSNII00003458		Intercompany Balance - GMAC, RFC, ResMor, Resi - 8/31/2009	Internal & External Financial Statements
RCJSNII00003459		Intercompany Balance - GMAC, RFC, ResMor, Resi - 9/30/2009	Internal & External Financial Statements
RCJSNII00003460		Intercompany Balance - GMAC, RFC, ResMor, Resi - 9/30/2009	Internal & External Financial Statements
RCJSNII00003461		ResCap - Consolidated Intercompany Balance Information at 9/30/2009	Internal & External Financial Statements
RCJSNII00003462		ResCap - Consolidated Intercompany Balance Information at 9/30/2009	Internal & External Financial Statements
RCJSNII00003463		Intercompany Balance - GMAC, RFC, ResMor, Resi - 9/30/2009	Internal & External Financial Statements
RCJSNII00003464			Other
RCJSNII00003465		Intercompany Balance - RFC, Resi - 9/30/2009	Internal & External Financial Statements
RCJSNII00003466		Intercompany Balance - GMAC, RFC, ResMor, Resi - 9/30/2009	Internal & External Financial Statements
RCJSNII00003467		Intercompany Balance - RFC Corp. - 9/30/2009	Internal & External Financial Statements
RCJSNII00003468		Intercompany Balance - GMAC, RFC, ResMor, Resi - 9/30/2009	Internal & External Financial Statements
RCJSNII00003469		Intercompany Balance - RFC, Resi - 9/30/2009	Internal & External Financial Statements
RCJSNII00003470		Intercompany Balance - GMAC, RFC, ResMor, Resi - 9/30/2009	Internal & External Financial Statements
RCJSNII00003471		Intercompany Balance - GMAC, RFC, ResMor, Resi - 9/30/2009	Internal & External Financial Statements
RCJSNII00003472		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 10/31/2009	Internal & External Financial Statements
RCJSNII00003473		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 10/31/2009	Internal & External Financial Statements
RCJSNII00003474		ResCap - Consolidated Intercompany Balance Information at 10/31/2009	Internal & External Financial Statements
RCJSNII00003475		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 10/31/2009	Internal & External Financial Statements
RCJSNII00003476			Other
RCJSNII00003477		Intercompany Balance - RFC Corp. - 10/31/2009	Internal & External Financial Statements
RCJSNII00003478		Intercompany Balance - RFC, Resi - 10/31/2009	Internal & External Financial Statements
RCJSNII00003479			Other
RCJSNII00003480		Intercompany Balance - RFC Corp. - 10/31/2009	Internal & External Financial Statements
RCJSNII00003481		ResCap - Intercompany Out of Balance Condition - 10/2009 Month-End Status	Internal & External Financial Statements
RCJSNII00003482		Intercompany Balance - RFC, Resi - 10/31/2009	Internal & External Financial Statements

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RCJSNII00003483		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 11/30/2009	Internal & External Financial Statements
RCJSNII00003484		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 11/30/2009	Internal & External Financial Statements
RCJSNII00003485		ResCap - Consolidated Intercompany Balance Information at 11/30/2009	Internal & External Financial Statements
RCJSNII00003486		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 11/30/2009	Internal & External Financial Statements
RCJSNII00003487			Other
RCJSNII00003488		Intercompany Balance - RFC, Resi - 11/30/2009	Internal & External Financial Statements
RCJSNII00003489		Intercompany Balance - RFC, Resi - 11/30/2009	Internal & External Financial Statements
RCJSNII00003490		Intercompany Balance - GMAC, RFC, ResMor, Resi - 11/30/2009	Internal & External Financial Statements
RCJSNII00003491		Intercompany Balance - RFC Corp. - 11/30/2009	Internal & External Financial Statements
RCJSNII00003492			Other
RCJSNII00003493		ResCap - Intercompany Out of Balance Condition - 11/2009 Month-End Status	Internal & External Financial Statements
RCJSNII00003494		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 11/30/2009	Internal & External Financial Statements
RCJSNII00003495		Intercompany Balance - RFC Corp. - 11/30/2009	Internal & External Financial Statements
RCJSNII00003496		Intercompany Balance - RFC, Resi - 11/30/2009	Internal & External Financial Statements
RCJSNII00003497		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 12/31/2009	Internal & External Financial Statements
RCJSNII00003499		ResCap - Consolidated Intercompany Balance Information at 12/31/2009	Internal & External Financial Statements
RCJSNII00003506		ResCap - Intercompany Out of Balance Condition - 12/2009 Month-End Status	Internal & External Financial Statements
RCJSNII00003507		Intercompany Balance - RFC, Resi - 12/31/2009	Internal & External Financial Statements
RCJSNII00003508		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 12/31/2009	Internal & External Financial Statements
RCJSNII00003509		Intercompany Balance - RFC Corp. - 12/31/2009	Internal & External Financial Statements
RCJSNII00003510		Intercompany Balances and Trial Balances as of January 31, 2013	Internal & External Financial Statements
RCJSNII00003511		Intercompany Balances w/ GL Account Numbers [Period Unknown]	Internal & External Financial Statements
RCJSNII00003512		ResCap - Consolidated Intercompany Balance Information at 6/30/2012	Internal & External Financial Statements
RCJSNII00003513		ResCap - Consolidated Intercompany Balance Information at 5/31/2012	Internal & External Financial Statements
RCJSNII00003514		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 1/31/2010	Internal & External Financial Statements
RCJSNII00003515			Other
RCJSNII00003516		Intercompany Balance - RFC Corp. - 1/31/2010	Internal & External Financial Statements
RCJSNII00003517		ResCap - Intercompany Out of Balance Condition - 01/2010 Month-End Status	Internal & External Financial Statements
RCJSNII00003518		Intercompany Balance - RFC, Resi - 1/31/2010	Internal & External Financial Statements
RCJSNII00003519		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 1/31/2010	Internal & External Financial Statements
RCJSNII00003521		Intercompany Balance - RFC Corp. - 2/28/2010	Internal & External Financial Statements
RCJSNII00003522		ResCap - Intercompany Out of Balance Condition - 02/2010 Month-End Status	Internal & External Financial Statements
RCJSNII00003523		Intercompany Balance - RFC, Resi - 2/28/2010	Internal & External Financial Statements
RCJSNII00003524		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 2/28/2010	Internal & External Financial Statements
RCJSNII00003525		Intercompany Balance - RFC, Resi - 2/28/2010	Internal & External Financial Statements
RCJSNII00003526		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 3/31/2010	Internal & External Financial Statements
RCJSNII00003527		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 3/31/2010	Internal & External Financial Statements
RCJSNII00003528		Intercompany Balance - RFC Corp. - 3/31/2010	Internal & External Financial Statements
RCJSNII00003529		ResCap - Intercompany Out of Balance Condition - 03/2010 Month-End Status	Internal & External Financial Statements
RCJSNII00003530		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 3/31/2010	Internal & External Financial Statements
RCJSNII00003531		Intercompany Balance - RFC, Resi - 4/30/2010	Internal & External Financial Statements
RCJSNII00003532		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 4/30/2010	Internal & External Financial Statements
RCJSNII00003533		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 4/30/2010	Internal & External Financial Statements
RCJSNII00003534		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 4/30/2010	Internal & External Financial Statements
RCJSNII00003535		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 4/30/2010	Internal & External Financial Statements
RCJSNII00003536		Intercompany Balance - RFC Corp. - 5/31/2010	Internal & External Financial Statements
RCJSNII00003537		ResCap - Intercompany Out of Balance Condition - 04/2010 Month-End Status	Internal & External Financial Statements
RCJSNII00003538		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 5/31/2010	Internal & External Financial Statements

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RCJSNII00003539		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 5/31/2010	Internal & External Financial Statements
RCJSNII00003540		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 5/31/2010	Internal & External Financial Statements
RCJSNII00003541		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 5/31/2010	Internal & External Financial Statements
RCJSNII00003542		ResCap - Intercompany Out of Balance Condition - 05/2010 Month-End Status	Internal & External Financial Statements
RCJSNII00003543		Intercompany Balance - Resi - 5/31/2010	Internal & External Financial Statements
RCJSNII00003544		Intercompany Balance - RFC, Resi - 5/31/2010	Internal & External Financial Statements
RCJSNII00003545		Intercompany Balance - RFC Corp. - 5/31/2010	Internal & External Financial Statements
RCJSNII00003546		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 5/31/2010	Internal & External Financial Statements
RCJSNII00003547		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 5/31/2010	Internal & External Financial Statements
RCJSNII00003548		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 5/31/2010	Internal & External Financial Statements
RCJSNII00003549		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 5/31/2010	Internal & External Financial Statements
RCJSNII00003550		ResCap - Intercompany Out of Balance Condition - 06/2010 Month-End Status	Internal & External Financial Statements
RCJSNII00003551		Intercompany Balance - Resi - 5/31/2010	Internal & External Financial Statements
RCJSNII00003552		Intercompany Balance - RFC, Resi, ResMor, Ally Bank - 5/31/2010	Internal & External Financial Statements
RCJSNII00003553		GL Trial Balance - Intercompany Accounts 7/31/2010	Internal & External Financial Statements
RCJSNII00003555		GL Trial Balance - Intercompany Accounts 8/31/2010	Internal & External Financial Statements
RCJSNII00003556		GL Trial Balance - Intercompany Accounts 9/30/2010	Internal & External Financial Statements
RCJSNII00003558		GL Trial Balance - Intercompany Accounts 10/31/2010	Internal & External Financial Statements
RCJSNII00003560		GL Trial Balance - Intercompany Accounts 11/30/2010	Internal & External Financial Statements
RCJSNII00003562		GL Trial Balance - Intercompany Accounts 12/31/2010	Internal & External Financial Statements
RCJSNII00003564		ResCap - Intercompany Out of Balance Condition - 12/2010 Month-End Status	Internal & External Financial Statements
RCJSNII00003565		Intercompany Balances/GL Account Balances - 10/31/2012	Internal & External Financial Statements
RCJSNII00003566		Intercompany Balances/GL Account Balances - 12/31/2012	Internal & External Financial Statements
RCJSNII00003567		GL Trial Balance - Intercompany Accounts 1/31/2012	Internal & External Financial Statements
RCJSNII00003569		ResCap - January 2012 Intercompany Out-of-Balance Certification	Internal & External Financial Statements
RCJSNII00003570		ResCap - February 2012 Intercompany Out-of-Balance Certification	Internal & External Financial Statements
RCJSNII00003571		Summary of I/C Account Reconciliations - ResCap at 2/29/12	Internal & External Financial Statements
RCJSNII00003572		GL Trial Balance - Intercompany Accounts 2/29/2012	Internal & External Financial Statements
RCJSNII00003573		GL Trial Balance - Intercompany Accounts 2/29/2012	Internal & External Financial Statements
RCJSNII00003575		Intercompany - asset balance difference reconciliation 2/29/12	Bankruptcy Filings & Background Information
RCJSNII00003578		ResCap Intercompany Inventory Certification - 3/31/2012	Bankruptcy Filings & Background Information
RCJSNII00003579		GL Trial Balance - Intercompany Accounts 3/31/2012	Internal & External Financial Statements
RCJSNII00003584			Other
RCJSNII00003585		GL Trial Balance - Intercompany Accounts by Subsidiary [Period Unknown]	Internal & External Financial Statements
RCJSNII00003588		ResCap - March 2012 Intercompany Out-of-Balance Certification	Internal & External Financial Statements
RCJSNII00003589		ResCap - April 2012 Intercompany Out-of-Balance Certification	Internal & External Financial Statements
RCJSNII00003590		GL Trial Balance - Intercompany Accounts 4/30/2012	Internal & External Financial Statements
RCJSNII00003592		GL Trial Balance - Intercompany Accounts 5/31/2012	Internal & External Financial Statements
RCJSNII00003593		ResCap - May 2012 Intercompany Out-of-Balance Certification	Internal & External Financial Statements
RCJSNII00003594		GL Trial Balance - Intercompany Accounts 6/30/2012	Internal & External Financial Statements
RCJSNII00003595		ResCap - June 2012 Intercompany Out-of-Balance Certification	Internal & External Financial Statements
RCJSNII00003596		GL Trial Balance - Intercompany Accounts 7/31/2012	Internal & External Financial Statements
RCJSNII00003598		ResCap - July 2012 Intercompany Out-of-Balance Certification	Internal & External Financial Statements
RCJSNII00003599		ResCap - July 2012 Intercompany Out-of-Balance Certification	Internal & External Financial Statements
RCJSNII00003601		GL Trial Balance - Intercompany Accounts 9/30/2012	Internal & External Financial Statements
RCJSNII00003603			Other
RCJSNII00003604		GL Trial Balance - Intercompany Accounts 10/31/2012	Internal & External Financial Statements
RCJSNII00003605		ResCap - October 2012 Intercompany Out-of-Balance Certification	Internal & External Financial Statements

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RCJSNII00003606		GL Trial Balance - Intercompany Accounts 11/30/2012	Internal & External Financial Statements
RCJSNII00003607		ResCap - November 2012 Intercompany Out-of-Balance Certification	Internal & External Financial Statements
RCJSNII00003608		ResCap Intercompany Certification - 12/31/2012	Bankruptcy Filings & Background Information
RCJSNII00003610		ResCap - December 2012 Intercompany Out-of-Balance Certification	Internal & External Financial Statements
RCJSNII00003612		GL Trial Balance - Intercompany Accounts 12/31/2012	Internal & External Financial Statements
RCJSNII00003613		Intercompany Balances for April [Year Unknown]	Internal & External Financial Statements
RCJSNII00003624		Intercompany Balances for March [Year Unknown]	Internal & External Financial Statements
RCJSNII00003625		ResCap - Consolidated IC Balances and Debt Forgiveness Entries - 2/29/2012	Internal & External Financial Statements
RCJSNII00003626		Intercompany Account Relationships - Compliant and Non-Compliant - December 2011	Bankruptcy Filings & Background Information
RCJSNII00003627		Intercompany Balances/GL Account Balances - 8/31/2012	Internal & External Financial Statements
RCJSNII00003681		ResCap Intercompany Inventory Certification - 12/31/2011	Bankruptcy Filings & Background Information
RCJSNII00003682		ResCap Intercompany Inventory Certification - 12/31/2011	Bankruptcy Filings & Background Information
RCJSNII00003683		ResCap Intercompany Inventory Certification - 12/31/2011	Bankruptcy Filings & Background Information
RCJSNII00003684		ResCap Intercompany Inventory Certification - 12/31/2011	Bankruptcy Filings & Background Information
RCJSNII00003685		ResCap Intercompany Inventory Certification - 12/31/2011	Bankruptcy Filings & Background Information
RCJSNII00003686		ResCap Intercompany Inventory Certification - 12/31/2011	Bankruptcy Filings & Background Information
RCJSNII00003687		ResCap Intercompany Inventory Certification - 12/31/2011	Bankruptcy Filings & Background Information
RCJSNII00003688		ResCap Intercompany Inventory Certification - 12/31/2011	Bankruptcy Filings & Background Information
RCJSNII00003692		ResCap Intercompany Inventory Certification - 12/31/2012	Bankruptcy Filings & Background Information
RCJSNII00003694		ResCap Intercompany Inventory Certification - 3/31/2012	Bankruptcy Filings & Background Information
RCJSNII00003695		ResCap Intercompany Inventory Certification - 3/31/2012	Bankruptcy Filings & Background Information
RCJSNII00003696		ResCap Intercompany Inventory Certification - 3/31/2012	Bankruptcy Filings & Background Information
RCJSNII00003697		ResCap Intercompany Inventory Certification - 3/31/2012	Bankruptcy Filings & Background Information
RCJSNII00003698		ResCap Intercompany Inventory Certification - 3/31/2012	Bankruptcy Filings & Background Information
RCJSNII00003699		ResCap Intercompany Inventory Certification - 3/31/2012	Bankruptcy Filings & Background Information
RCJSNII00003700		ResCap Intercompany Inventory Certification - 3/31/2012	Bankruptcy Filings & Background Information
RCJSNII00003701		ResCap Intercompany Inventory Certification - 3/31/2012	Bankruptcy Filings & Background Information
RCJSNII00003702		ResCap Intercompany Inventory Certification - 3/31/2012	Bankruptcy Filings & Background Information
RCJSNII00003703		ResCap Intercompany Inventory Certification - 9/30/2012	Bankruptcy Filings & Background Information
RCJSNII00003704		ResCap Intercompany Inventory Certification - 12/31/2012	Bankruptcy Filings & Background Information
RCJSNII00003705		ResCap Intercompany Inventory Certification - 12/31/2012	Bankruptcy Filings & Background Information
RCJSNII00003706		ResCap Intercompany Inventory Certification - 9/30/2012	Bankruptcy Filings & Background Information
RCJSNII00003707		Intercompany Balances/GL Account Balances - 11/30/2012	Internal & External Financial Statements
RCJSNII00019891		Residential Funding - Corporation Franchise Tax (Minnesota) - 2007	Tax Returns
RCJSNII00019897		Residential Funding - Corporation Franchise Tax (California) - 2007	Tax Returns
RCJSNII00019923		Homecomings - Corporation Franchise Tax (Minnesota) - 2007	Tax Returns
RCJSNII00019927		Homecomings - Corporation Franchise Tax (California) - 2007	Tax Returns
RCJSNII00019939		RFC Asset Holdings II - LLC Return of Income (California) - 2007	Tax Returns
RCJSNII00019951		Residential Funding - PA Corporate Tax Report (2007)	Tax Returns
RCJSNII00019959		Residential Funding - LLC Return of Income (California) - 2007	Tax Returns
RCJSNII00019969		Asset Management Performance Services- LLC Return of Income (California) - 2007	Tax Returns
RCJSNII00019976		LenOne - LLC Return of Income (California) - 2007	Tax Returns
RCJSNII00019986		KBOne - LLC Return of Income (California) - 2007	Tax Returns
RCJSNII00019996		GMCMTH - LLC Return of Income (California) - 2007	Tax Returns
RCJSNII00020007		GMAC Model Home Finance - PA Corporate Tax Report (2007)	Tax Returns
RCJSNII00020015		GMAC Model Home Finance - LLC Return of Income (California) - 2007	Tax Returns
RCJSNII00020028		RFC Construction Funding - LLC Return of Income (California) - 2007	Tax Returns
RCJSNII00020035		Homecomings Financial - Rhode Island Business Corporation Tax Return (2007)	Tax Returns

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RCJSNII00020037		PA CORPORATE TAX REPORT 2007	Tax Returns
RCJSNII00020045		Homecomings Financial, LLC - NH Tax Return 2007	Tax Returns
RCJSNII00020051		State Tax Return	Tax Returns
RCJSNII00020053		State Tax Return	Tax Returns
RCJSNII00020066		State Tax Return	Tax Returns
RCJSNII00020073		State Tax Return	Tax Returns
RCJSNII00020080		State Tax Return	Tax Returns
RCJSNII00020087		RFC, LLC - RI Tax Return 2007	Tax Returns
RCJSNII00020089		RFC, LLC - PA Tax Return 2007	Tax Returns
RCJSNII00020097		RFC, LLC - NH Tax Return 2007	Tax Returns
RCJSNII00020104		RFC, LLC - CA Tax Return 2007	Tax Returns
RCJSNII00020118		RFC, LLC - AL Tax Return 2008	Tax Returns
RCJSNII00020123		RFC Resort Funding, LLC - CA Tax Return 2008	Tax Returns
RCJSNII00020129		RFC Asset Holdings II, LLC - CA Tax Return 2008	Tax Returns
RCJSNII00020139		Residential Funding USA Corporation - CA Tax Return 2008	Tax Returns
RCJSNII00020159		Residential Funding USA Corporation - MN Tax Return 2008	Tax Returns
RCJSNII00020166		Residential Funding Securities, LLC - PA Tax Return 2008	Tax Returns
RCJSNII00020174		Residential Funding Securities, LLC - CA Tax Return 2008	Tax Returns
RCJSNII00020184		Residential Funding Real Estate Holdings, LLC - CA Tax Return 2008	Tax Returns
RCJSNII00020185		KBOne, LLC - CA Tax Return 2008	Tax Returns
RCJSNII00020194		Lenone, LLC - CA Tax Return 2008	Tax Returns
RCJSNII00020200		MFC Asset, LLC - CA Tax Return 2008	Tax Returns
RCJSNII00020207		RC Properties VI, LLC - CA Tax Return 2008	Tax Returns
RCJSNII00020212		RC Properties V, LLC - CA Tax Return 2008	Tax Returns
RCJSNII00020217		Homecomings Financial, LLC - KS Franchise Tax 2008	Tax Returns
RCJSNII00020218		Homecomings Financial, LLC - NH Tax Return 2008	Tax Returns
RCJSNII00020230		Homecomings Financial, LLC - PA Tax Return 2008	Tax Returns
RCJSNII00020239		Homecomings Financial, LLC - CA Limited Liability Return of Income 2008	Tax Returns
RCJSNII00020252		Homecomings Financial, LLC - RI Tax Return 2008	Tax Returns
RCJSNII00020255		Homecomings Financial, LLC - MN Tax Return 2008	Tax Returns
RCJSNII00020261		Homecomings Financial USA Corporation - CA Tax Return 2008	Tax Returns
RCJSNII00020276		GMCMT, LLC - CA Limited Liability Return of Income 2008	Tax Returns
RCJSNII00020287		GMAC Model Home Finance, LLC - Tax Report 2008	Tax Returns
RCJSNII00020295		GMAC Model Home Finance, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020306		Equity Investments II, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020316		RFC Construction Funding, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020322		Residential Funding Company, LLC - RI Tax Return 2008	Tax Returns
RCJSNII00020325		Residential Funding Company, LLC - PA Tax Return 2008	Tax Returns
RCJSNII00020333		Residential Funding Company, LLC - NH Tax Return 2008	Tax Returns
RCJSNII00020346		Residential Funding Company, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020359		RFC Funding Company, LLC - AL Financial Institution Tax Return 2009	Tax Returns
RCJSNII00020365		Asset Management Performance Services, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020371		Residential Funding Company, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020385		RFC Funding Company, LLC - AL Financial Institution Tax Return 2010	Tax Returns
RCJSNII00020390		Residential Funding Company, LLC - NH Tax Return 2009	Tax Returns
RCJSNII00020405		Residential Funding Company, LLC - PA Corporate Tax Report 2008	Tax Returns
RCJSNII00020415		Residential Funding Company, LLC - RI Corporate Tax Report 2008	Tax Returns
RCJSNII00020418		RFC Asset Holdings II, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns

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RCJSNII00020427		MFC Asset, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020433		Equity Investment II, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020440		Homecomings Financial, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020453		Homecomings Financial, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020465		Homecomings Financial, LLC - PA Corporate Tax Report 2008	Tax Returns
RCJSNII00020475		Homecomings Financial, LLC - RI Corporate Tax Report 2008	Tax Returns
RCJSNII00020478		RFC Construction Funding, LLC - Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020484		Asset Management Performance Services, LLC - Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020489		Residential Funding Real Estate, LLC - RI Corporate Tax Return 2009	Tax Returns
RCJSNII00020493		RC Properties V, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020499		RC Properties VI, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020505		RC Properties XVIII, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020511		Residential Funding Securities, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020520		(AMENDED) Residential Funding Securities, LLC - CA Limited Liability Company Return of Income 2008	Tax Returns
RCJSNII00020529		Residential Funding Securities, LLC - PA Corporate Tax Report 2009	Tax Returns
RCJSNII00020537		Residential Funding Securities, LLC - PA Corporate Tax Report 2008	Tax Returns
RCJSNII00020545		Residential Funding Company, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020560		Residential Funding Company, LLC - AL Excise Tax Return 2010	Tax Returns
RCJSNII00020566		Residential Funding Company, LLC - NH Business Tax Summary 2009	Tax Returns
RCJSNII00020582		Residential Funding Company, LLC - PA Corporate Tax Report 2009	Tax Returns
RCJSNII00020590		Residential Funding Company, LLC - RI Business Corporate Tax Return 2009	Tax Returns
RCJSNII00020595		RFC Asset Holdings II, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020606		MFC Asset, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020614		Equity Investments II, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020622		Homecomings Financial, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020636		Homecomings Financial, LLC - NH Business Tax Summary 2009	Tax Returns
RCJSNII00020649		Homecomings Financial, LLC - PA Corporate Tax Report 2009	Tax Returns
RCJSNII00020657		Homecomings Financial, LLC - RI Tax Return 2009	Tax Returns
RCJSNII00020662		RFC Construction Funding, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020670		Asset Management Performance Services, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020678		Residential Funding Real Estate Holdings, LLC - RI Tax Return 2009	Tax Returns
RCJSNII00020683		RC Properties V, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020689		RC Properties VI, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020697		RC Properties XVIII, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020703		RC Properties XX, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020709		Residential Funding Securities, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020715		Residential Funding Company, LLC - AL Excise Tax Return 2010	Tax Returns
RCJSNII00020722		Residential Funding Company, LLC - PA Corporate Tax Report 2009	Tax Returns
RCJSNII00020731		Residential Funding Company, LLC - RI Tax Return 2009	Tax Returns
RCJSNII00020734		RFC Asset Holdings II, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020740		MFC Asset, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020746		Equity Investments II, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020752		Homecomings Financial, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020762		Homecomings Financial, LLC - PA Corporate Tax Report 2009	Tax Returns
RCJSNII00020771		Homecomings Financial, LLC - RI Tax Return 2009	Tax Returns
RCJSNII00020774		RFC Construction Funding, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020780		Asset Management Performance Services, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns

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RCJSNII00020785		Residential Funding Real Estate Holdings, LLC - RI Tax Return 2009	Tax Returns
RCJSNII00020788		RC Properties V, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020794		RC Properties VI, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020800		RC Properties XVIII, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020806		RC Properties XX, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020812		Residential Funding Securities, LLC - CA Limited Liability Company Return of Income 2009	Tax Returns
RCJSNII00020818		Residential Funding Securities, LLC - PA Corporate Tax Report 2009	Tax Returns
RCJSNII00020824			Other
RCJSNII00020826		Residential Funding Company, LLC - CA Limited Liability Company Return of Income 2010	Tax Returns
RCJSNII00020836		Residential Funding Company, LLC - AL Excise Tax Return 2011	Tax Returns
RCJSNII00020843		Residential Funding Company, LLC - PA Corporate Tax Report 2010	Tax Returns
RCJSNII00020853		Residential Funding Company, LLC - RI Tax Return 2010	Tax Returns
RCJSNII00020857		RFC Asset Holdings II, LLC - CA Limited Liability Company Return of Income 2010	Tax Returns
RCJSNII00020866		MFC Asset, LLC - CA Limited Liability Company Return of Income 2010	Tax Returns
RCJSNII00020872		Equity Investments II, LLC - CA Limited Liability Company Return of Income 2010	Tax Returns
RCJSNII00020879		Homecomings Financial, LLC - CA Limited Liability Company Return of Income 2010	Tax Returns
RCJSNII00020888		Homecomings Financial, LLC - PA Corporate Tax Report 2010	Tax Returns
RCJSNII00020898		Homecomings Financial, LLC - RI Tax Return 2010	Tax Returns
RCJSNII00020902		RFC Construction Funding, LLC - CA Limited Liability Company Return of Income 2010	Tax Returns
RCJSNII00020908		Asset Management Performance Services, LLC - CA Limited Liability Company Return of Income 2010	Tax Returns
RCJSNII00020913		Residential Funding Real Estate Holdings, LLC - RI Tax Return 2010	Tax Returns
RCJSNII00020916		RC Properties V, LLC - CA Limited Liability Company Return of Income 2010	Tax Returns
RCJSNII00020922		RC Properties VI, LLC - CA Limited Liability Company Return of Income 2010	Tax Returns
RCJSNII00020928		RC Properties XVIII, LLC - CA Limited Liability Company Return of Income 2010	Tax Returns
RCJSNII00020934		RC Properties XX, LLC - CA Limited Liability Company Return of Income 2010	Tax Returns
RCJSNII00020940		Residential Funding Company, LLC - CA Limited Liability Company Return of Income 2011	Tax Returns
RCJSNII00020947		Residential Funding Company, LLC - AL Tax Return & Annual Report 2011	Tax Returns
RCJSNII00020950		Residential Funding Company, LLC - PA Corporate Tax Report 2011	Tax Returns
RCJSNII00020958		Residential Funding Company, LLC - RI Tax Return 2011	Tax Returns
RCJSNII00020962		Residential Funding Real Estate Holdings, LLC - RI Tax Return 2011	Tax Returns
RCJSNII00020966		Homecomings Financial, LLC - CA Limited Liability Company Return of Income 2011	Tax Returns
RCJSNII00020972		Homecomings Financial, LLC - PA Corporate Tax Report 2011	Tax Returns
RCJSNII00020980		Homecomings Financial, LLC - RI Tax Return 2011	Tax Returns
RCJSNII00020985		RFC Asset Holdings II, LLC - CA Limited Liability Company Return of Income 2011	Tax Returns
RCJSNII00020992		RFC Construction Funding, LLC - CA Limited Liability Company Return of Income 2011	Tax Returns
RCJSNII00020998		Equity Investments II, LLC - CA Limited Liability Company Return of Income 2011	Tax Returns
RCJSNII00021004		RC Properties XX, LLC - CA Limited Liability Company Return of Income 2011	Tax Returns
RCJSNII00021010		RC Properties V, LLC - CA Limited Liability Company Return of Income 2011	Tax Returns
RCJSNII00021016		RC Properties VI, LLC - CA Limited Liability Company Return of Income 2011	Tax Returns
RCJSNII00021022		RC Properties XVIII, LLC - CA Limited Liability Company Return of Income 2011	Tax Returns
RCJSNII00021028		Several Entities - Federal Tax Returns 2010	Tax Returns
RCJSNII00021514		Several Entities - Federal Tax Returns 2010	Tax Returns
RCJSNII00021895		Several Entities - Federal Tax Returns 2011	Tax Returns
RCJSNII00025494		ResCap - Monthly Intercompany Balances from 12/31/2007 - 10/31/2012	Internal & External Financial Statements
RCJSNII00025497			Other
RCJSNII00025498			Other
RCJSNII00025499			Other
RCJSNII00025500			Other

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RCJSNII00025502			Other
RCJSNII00025509			Other
RCJSNII00025516			Other
RCJSNII00025518		ResCap - Debt Forgiveness Schedule 2008-2009	Internal & External Financial Statements
RCJSNII00025521			Other
RCJSNII00025523			Other
RCJSNII00025524		Memo: ResCap Capital Contributions to Meet Net Worth Covenants	Email and Memo Communications
RCJSNII00025534		Memo: ResCap to Write Down a Viaduct 7 Note	Email and Memo Communications
RCJSNII00025542			Other
RCJSNII00025547		Proposed Debt Forgiveness for RFC -9/21/2009	Legal
RCJSNII00025553		Memo: From James Young, Allocation of Capital - Forgiveness of Intercompany Debt, June 25, 2009	Email and Memo Communications
RCJSNII00025557			Other
RCJSNII00025562			Other
RCJSNII00025565			Other
RCJSNII00025572			Other
RCJSNII00025581			Other
RCJSNII00025588			Other
RCJSNII00025589			Other
RCJSNII00025630			Other
RCJSNII00025670			Other
RCJSNII00025672			Other
RCJSNII00025673		ResCap Capital Support for RFC	Legal
RCJSNII00025675		Memo: From James Young: Allocation of Capital - Intercompany Debt Forgiveness 12/8/2009	Email and Memo Communications
RCJSNII00025680		Intercompany Information	Email and Memo Communications
RCJSNII00025681			Other
RCJSNII00025682			Other
RCJSNII00025683		ResCap - Intercompany Balances as of 12/31/2012	Internal & External Financial Statements
RCJSNII00025738			Other
RCJSNII00025745			Other
RCJSNII00025746			Other
RCJSNII00025747		Summary of Intercompany relationships with SOALs Descriptions	Internal & External Financial Statements
RCJSNII00025748			Other
RCJSNII00025750		Summary of Intercompany relationships with SOALs balances	Internal & External Financial Statements
RCJSNII00025751			Other
RCJSNII00025752			Other
RCJSNII00025755		Top 7 Intercompany Receivables	Bankruptcy Filings & Background Information
RCJSNII00025767			Other
RCJSNII00025768			Other
RCJSNII00025769			Other
RCJSNII00025770			Other
RCJSNII00025885			Other
RCJSNII00025886		Background of the April 20th Debt Forgiveness Report	Internal & External Financial Statements
RCJSNII00026018			Other
RCJSNII00026019			Other
RCJSNII00026020			Other
RCJSNII00026023			Other
RCJSNII00026037			Other
RCJSNII00026052		Debt Forgiveness Procedures	Bankruptcy Filings & Background Information

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RCJSNII00026151			Other
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RCJSNII0010536			Other
RCJSNII0010538			Other
RCJSNII0010539			Other

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RCJSNII0010580			Other
RCJSNII0010638			Other
RCJSNII0010639			Other
RCJSNII0010640		Intercompany interest accrual	Internal & External Financial Statements
RCJSNII0010641		Intercompany interest	Internal & External Financial Statements
RCJSNII0010644			Other
RCJSNII0010645			Other
RCJSNII0010647		RFC PeopleSoft Detail 2012	Internal & External Financial Statements
RCJSNII0010651			Other
RCJSNII0010654			Other
RCJSNII0010658		2012 - Negative assets in PeopleSoft	Email and Memo Communications
RCJSNII0010730			Other
RCJSNII0010731			Other
RCJSNII0010734			Other
RCJSNII0010768			Other
RCJSNII0010773			Other
RCJSNII0010777			Other
RCJSNII0010780			Other
RCJSNII0011305			Other
RCJSNII0011306		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNII0011488			Other
RCJSNII0011490		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNII0012936			Other
RCJSNII0012937			Other
RCJSNII0012960			Other
RCJSNII0012964			Other
RCJSNII0012965			Other
RCJSNII0012966			Other
RCJSNII0012975		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNII0012976		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNII0013050			Other
RCJSNII0013052			Other
RCJSNII0013201			Other
RCJSNII0013202			Other
RCJSNII0013575		Summary Model Input - Resi	Other
RCJSNII0013629			Other
RCJSNII0013631			Other
RCJSNII0013729			Other
RCJSNII0013731			Other
RCJSNII0013766			Other
RCJSNII0013768			Other
RCJSNII0013771			Other
RCJSNII0014058			Other
RCJSNII0014059			Other
RCJSNII0014153			Other
RCJSNII0014455		ResCap Intercompany Balances Consolidated Version (2/29/2012)	Internal & External Financial Statements
RCJSNII0014742		Email from Westman, B. to Kornfeld, J. re: Intercompany Balances	Email and Memo Communications
RCJSNII0014743		ResCap Intercompany Balances Consolidated Version (2/29/2012)	Internal & External Financial Statements

Bates # / File Name	Docket #	Document Description	Category
RCJSNII0015113		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNII0015116		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNII0015117		Intercompany Legal Document	Legal
RCJSNII0015251		E-mail discussing intercompany	Email and Memo Communications
RCJSNII0015258		E-mail discussing intercompany	Email and Memo Communications
RCJSNII0015262		E-mail discussing intercompany	Email and Memo Communications
RCJSNII0015265		Notes Legal Structure	Legal
RCJSNII0015269			Other
RCJSNII0015271			Other
RCJSNII0015298			Other
RCJSNII0015317			Other
RCJSNII0015574			Other
RCJSNII0015580		Intercompany Funding Schedule	Legal
RCJSNII0015721			Other
RCJSNII0015722			Other
RCJSNII0015800			Other
RCJSNII0015906			Other
RCJSNII0015992			Other
RCJSNII0015993			Other
RCJSNII0016075			Other
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RCJSNII0016138			Other
RCJSNII0016244			Other
RCJSNII0016317			Other
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RCJSNII0016409			Other
RCJSNII0016485			Other
RCJSNII0016654			Other
RCJSNII0016655			Other
RCJSNII0016776			Other
RCJSNII0016778			Other
RCJSNII0016887			Other
RCJSNII0016888			Other
RCJSNII0016983			Other
RCJSNII0016984			Other
RCJSNII0017079			Other
RCJSNII0017080			Other
RCJSNII0017173			Other
RCJSNII0017254		ResCap Financial Statements	Internal & External Financial Statements
RCJSNII0017333			Other
RCJSNII0017334			Other
RCJSNII0017403			Other
RCJSNII0017485			Other
RCJSNII0017591			Other
RCJSNII0017592			Other
RCJSNII0017593			Other
RCJSNII0017655			Other
RCJSNII0017720			Other

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RCJSNII0017799			Other
RCJSNII0017800			Other
RCJSNII0017884			Other
RCJSNII0017885			Other
RCJSNII0017965			Other
RCJSNII0017966			Other
RCJSNII0018000			Other
RCJSNII0018001		ResCap Financial Statements	Internal & External Financial Statements
RCJSNII0018080			Other
RCJSNII0018162			Other
RCJSNII0018242			Other
RCJSNII0018248			Other
RCJSNII0018530			Other
RCJSNII0018532			Other
RCJSNII0018613			Other
RCJSNII0018615			Other
RCJSNII0018702			Other
RCJSNII0018784		ResCap Financial Statements	Internal & External Financial Statements
RCJSNII0018904			Other
RCJSNII0018908			Other
RCJSNII0018988			Other
RCJSNII0019070		ResCap Financial Statements	Internal & External Financial Statements
RCJSNII0019155			Other
RCJSNII0019156			Other
RCJSNII0019221			Other
RCJSNII0019283			Other
RCJSNII0019348			Other
RCJSNII0019349			Other
RCJSNII0019429			Other
RCJSNII0019502			Other
RCJSNII0019595			Other
RCJSNII0019596			Other
RCJSNII0019675			Other
RCJSNII0019745			Other
RCJSNII0019807			Other
RCJSNII0019808			Other
RCJSNII0019873			Other
RCJSNII0019874			Other
RCJSNII0019956			Other
RCJSNII0019958			Other
RCJSNII0020023			Other
RCJSNII0020024			Other
RCJSNII0020027			Other
RCJSNII0020028			Other
RCJSNII0020112			Other
RCJSNII0020113			Other
RCJSNII0020114			Other
RCJSNII0020204			Other

Bates # / File Name	Docket #	Document Description	Category
RCJSNII0020205			Other
RCJSNII0020284			Other
RCJSNII0020285			Other
RCJSNII0020354			Other
RCJSNII0020355			Other
RCJSNII0020435			Other
RCJSNII0020436			Other
RCJSNII0020437			Other
RCJSNII0020519			Other
RCJSNII0020520			Other
RCJSNII0020589			Other
RCJSNII0020590			Other
RCJSNII0020654			Other
RCJSNII0020655			Other
RCJSNII0020724			Other
RCJSNII0020785			Other
RCJSNII0020854			Other
RCJSNII0020917			Other
RCJSNII0020920			Other
RCJSNII0020989			Other
RCJSNII0021136	E-mail discussing intercompany		Email and Memo Communications
RCJSNII0021139	Schedule with Intercompany Balances		Internal & External Financial Statements
RCJSNII0021300			Other
RCJSNII0021301	Schedule with Intercompany Balances		Internal & External Financial Statements
RCJSNII0021430			Other
RCJSNII0021434	Schedule with Intercompany Balances		Internal & External Financial Statements
RCJSNII0021885	E-mail discussing intercompany		Email and Memo Communications
RCJSNII0021888	Schedule with Intercompany Balances		Internal & External Financial Statements
RCJSNII0022135			Other
RCJSNII0022136	Schedule with Intercompany Balances		Internal & External Financial Statements
RCJSNII0022137			Other
RCJSNII0022138	Schedule with Intercompany Balances		Internal & External Financial Statements
RCJSNII0022186			Other
RCJSNII0022187	Schedule with Intercompany Balances		Internal & External Financial Statements
RCJSNII0022822	E-mail discussing intercompany		Email and Memo Communications
RCJSNII0022825	Schedule with Intercompany Balances		Internal & External Financial Statements
RCJSNII0022970			Other
RCJSNII0022973	Schedule with Intercompany Balances		Internal & External Financial Statements
RCJSNII0023007			Other
RCJSNII0023008	Schedule with Intercompany Balances		Internal & External Financial Statements
RCJSNII0023009			Other
RCJSNII0023355			Other
RCJSNII0023357	Schedule with Intercompany Balances		Internal & External Financial Statements
RCJSNII0023866			Other
RCJSNII0023869	Schedule with Intercompany Balances		Internal & External Financial Statements
RCJSNII0024002			Other
RCJSNII0024004			Other
RCJSNII0024005			Other

Bates # / File Name	Docket #	Document Description	Category
RCJSNII0024006			Other
RCJSNII0024007			Other
RCJSNII0024008			Other
RCJSNII0024009			Other
RCJSNII0024010			Other
RCJSNII0024011		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNII0024027			Other
RCJSNII0024029			Other
RCJSNII0024030			Other
RCJSNII0024031		E-mail discussing intercompany	Email and Memo Communications
RCJSNII0024034		Debt Forgiveness Schedule	Bankruptcy Filings & Background Information
RCJSNII0024182			Other
RCJSNII0024183		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNII0024205		E-mail discussing intercompany	Email and Memo Communications
RCJSNII0024209			Other
RCJSNII0024210			Other
RCJSNII0024215		E-mail discussing intercompany	Email and Memo Communications
RCJSNII0024220		Debt Forgiveness Schedule	Bankruptcy Filings & Background Information
RCJSNII0024224			Other
RCJSNII0024225			Other
RCJSNII0024273			Other
RCJSNII0024276		State Tax Return	Tax Returns
RCJSNII0024279		State Tax Return	Tax Returns
RCJSNII0024282		State Tax Return	Tax Returns
RCJSNII0024285		State Tax Return	Tax Returns
RCJSNII0024288		State Tax Return	Tax Returns
RCJSNII0024289			Other
RCJSNII0024290			Other
RCJSNII0024291			Other
RCJSNII0024292			Other
RCJSNII0024293			Other
RCJSNII0024294			Other
RCJSNII0024295			Other
RCJSNII0024296			Other
RCJSNII0024297			Other
RCJSNII0024298			Other
RCJSNII0024841			Other
RCJSNII0024842		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNII0024856			Other
RCJSNII0024857			Other
RCJSNII0024858		Accounting Memo	Bankruptcy Filings & Background Information
RCJSNII0024866			Other
RCJSNII0024867		Accounting Memo	Bankruptcy Filings & Background Information
RCJSNII0024869		Accounting Memo	Bankruptcy Filings & Background Information
RCJSNII0024870		Accounting Memo	Bankruptcy Filings & Background Information
RCJSNII0024872		Accounting Memo	Bankruptcy Filings & Background Information
RCJSNII0024874		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNII0024943			Other

Bates # / File Name	Docket #	Document Description	Category
RCJSNIII0024944		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNIII0024953			Other
RCJSNIII0024954		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNIII0024955			Other
RCJSNIII0024956		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNIII0024957			Other
RCJSNIII0024958		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNIII0025379			Other
RCJSNIII0025380			Other
RCJSNIII0025475			Other
RCJSNIII0025476			Other
RCJSNIII0025490			Other
RCJSNIII0025498			Other
RCJSNIII0025565			Other
RCJSNIII0025567			Other
RCJSNIII0025581			Other
RCJSNIII0025582			Other
RCJSNIII0025583			Other
RCJSNIII0025584			Other
RCJSNIII0025642		E-mail discussing intercompany	Email and Memo Communications
RCJSNIII0025645		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNIII0025646		Intercompany Legal Document	Legal
RCJSNIII0025652		Intercompany Legal Document	Legal
RCJSNIII0025660		Intercompany Legal Document	Legal
RCJSNIII0027092			Other
RCJSNIII0027093			Other
RCJSNIII0027241			Other
RCJSNIII0027242		E-mail discussing intercompany	Email and Memo Communications
RCJSNIII0027247		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNIII0027285			Other
RCJSNIII0027286		E-mail discussing intercompany	Email and Memo Communications
RCJSNIII0027291		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNIII0027292		E-mail discussing intercompany	Email and Memo Communications
RCJSNIII0027299		Intercompany Schedule	Bankruptcy Filings & Background Information
RCJSNIII0027311			Other
RCJSNIII0027313		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNIII0028118		Email from Park, L. to Dondzila, C. re: Proj Bounce - Top Intercompany Relationships	Email and Memo Communications
RCJSNIII0028373		E-mail discussing intercompany	Email and Memo Communications
RCJSNIII0028376			Other
RCJSNIII0028377		Schedule with Intercompany Balances	Internal & External Financial Statements
RCJSNIII0028378			Other
RCJSNIII0028467			Other
RCJSNIII0028472			Other
RCJSNIII0028547			Other
RCJSNIII0028548			Other
RCJSNIII0028549			Other
RCJSNIII0029545			Other
RCJSNIII0029546		Legal Entity Tree, Accounts Tree, Department Tree	Internal & External Financial Statements

Bates # / File Name	Docket #	Document Description	Category
RCJSNIII0029547		ResCap Month End Close and Consolidation Process - High Level	Bankruptcy Filings & Background Information
RCJSNIII0029548		ResCap Month End Close and Consolidation Process - High Level	Email and Memo Communications
RCJSNIII0029549		ResCap Financial Reporting, Monthly Schedule, August 2012	Bankruptcy Filings & Background Information
RCJSNIII0029550			Other
RCJSNIII0029551		Accounting Month End Close Calendar, August 2012	Bankruptcy Filings & Background Information
RCJSNIII0029657		Debt forgiveness	Email and Memo Communications
RCJSNIII0029661		ResCap, HoldCo Balance Sheets	Internal & External Financial Statements
RCJSNIII0029662		ResCap, HoldCo Balance Sheets	Internal & External Financial Statements
RCJSNIII0029672			Other
RCJSNIII0029673			Other
RCJSNIII0029683			Other
RCJSNIII0029684			Other
RCJSNIII0029685			Other
RCJSNIII0029686		Debt Forgiveness - Residential Capital, LLC, PeopleSoft Financials, JOURNAL ENTRY DETAIL	Internal & External Financial Statements
RCJSNIII0029687			Other
RCJSNIII0029688			Other
RCJSNIII0030238		GMAC Mortgage Annual Financial Statements	Email and Memo Communications
RCJSNIII0030239		GMAC Mortgage Annual Financial Statements 2011	Internal & External Financial Statements
RCJSNIII0030538			Other
RCJSNIII0030540		Affiliate Transaction Deposit Requirements Tracking, Through 2/29/12	Bankruptcy Filings & Background Information
RCJSNIII0030551		Intercompany Balances, 2012	Email and Memo Communications
RCJSNIII0030552		ResCap Intercompany Balances, Consolidated Version, 2/29/2012	Bankruptcy Filings & Background Information
RCJSNIII0030576		Top intercompany balances, 2012	Email and Memo Communications
RCJSNIII0030579		Top intercompany balances, PeopleSoft data	Internal & External Financial Statements
RCJSNIII0030580		Loan agreement for ICC, May 4, 2005	Legal
RCJSNIII0030809		From: Barb Westman, To: Jeremy Stern and Mark Renzi, Intercompany with Parent, 3/19/2012	Email and Memo Communications
RCJSNIII0030812		Top intercompany balances, PeopleSoft data	Internal & External Financial Statements
RCJSNIII0030813		Amended and Restated Intercompany Advance Agreement, Homecomings Financial Network, June 30 2006	Legal
RCJSNIII0030819		Intercompany Advance Agreement for PATI June 1, 2009	Legal
RCJSNIII0030827		Intercompany Advance Agreement for RFC Asset Holdings II June 1, 2009	Legal
RCJSNIII0031658		Intercompany Analysis	Email and Memo Communications
RCJSNIII0031660		Affiliate Transactions	Email and Memo Communications
RCJSNIII0031661		ResCap Intercompany Balances, 12/31/2011	Internal & External Financial Statements
RCJSNIII0031678			Other
RCJSNIII0031684			Other
RCJSNIII0031693		Intercompany Balances, 2012	Email and Memo Communications
RCJSNIII0031695		ResCap Intercompany Balances, Consolidated Version, 2/29/2012	Internal & External Financial Statements
RCJSNIII0031711		Bounce - List of Legal Entities for AP	Email and Memo Communications
RCJSNIII0031712		PROJECT BOUNCE, Financial Summary by Legal Entity Balances	Bankruptcy Filings & Background Information
RCJSNIII0031728		Interco Inventory Schedule	Email and Memo Communications
RCJSNIII0031731		ResCap Intercompany Balances, Consolidated Version, 5/13/2012	Bankruptcy Filings & Background Information
RCJSNIII0031975		Interco file	Email and Memo Communications
RCJSNIII0031977		ResCap Intercompany Balances, Consolidated Version, Period @ 5/13/2012	Bankruptcy Filings & Background Information
RCJSNIII0032068		Intercompany Relationship Analysis	Email and Memo Communications
RCJSNIII0032070		Intercompany Balances, Consolidated Version, Period @ 5/13/2012	Bankruptcy Filings & Background Information
RCJSNIII0032129		Intercompany Relationship Analysis	Email and Memo Communications
RCJSNIII0032131		Intercompany Balances, Consolidated Version, Period @ 5/13/2012	Bankruptcy Filings & Background Information
RCJSNIII0032135		Intercompany Balances	Email and Memo Communications

Bates # / File Name	Docket #	Document Description	Category
RCJSNIII0032136		Intercompany Balances, Consolidated Version, Period @ 5/13/2012	Bankruptcy Filings & Background Information
RCJSNIII0033540		Debt forgiveness	Email and Memo Communications
RCJSNIII0033541		Residential Capital, LLC, Debt Forgiveness, January 1, 2008 - March 31, 2012	Bankruptcy Filings & Background Information
RCJSNIII0033544			Other
RCJSNIII0033545		ResCap/GMACM loan agreement	Bankruptcy Filings & Background Information
RCJSNIII0033550		Intercompany Advance Agreement - Homecomings Financial - 6/30/2006	Legal
RCJSNIII0033556		Note Issuance Facility Deed - 6/4/2008	Legal
RCJSNIII0033603			Other
RCJSNIII0033604		Project Bounce, Summary of Top 10 Intercompany Relationships, Balances as of 12/31/12	Bankruptcy Filings & Background Information
RCJSNIII0033605		Top intercompany balances, PeopleSoft data	Internal & External Financial Statements
RCJSNIII0033699			Other
RCJSNIII0033701		ResCap Intercompany Balances	Bankruptcy Filings & Background Information
RCJSNIII0034044		Email from Westman, B. to Dondzila, C. re: Discuss GSAP and Legal Entity Certifications	Email and Memo Communications
RCJSNIII0035431			Other
RCJSNIII0035433		ResCap - Draft Consolidated Financials December 2009 and 2010	Legal
RCJSNIII0035541			Other
RCJSNIII0037951			Other
RCJSNIII0037952		Cash management generated balances	Email and Memo Communications
RCJSNIII0037953		Intercompany Account Relationships in Compliance with Policy	Bankruptcy Filings & Background Information
RCJSNIII0038865			Other
RCJSNIII0038866		GL Trial Balance - Resi/GMAC Bank/BMMZ/RFC - 9/30/2011	Internal & External Financial Statements
RCJSNIII0038886			Other
RCJSNIII0038887		RFC - Unaudited Trial Balances 9/30/2011	Internal & External Financial Statements
RCJSNIII0040842			Other
RCJSNIII0040843			Other
RCJSNIII0041452		Email from Westman, B. to Venne, S. re: Intercompany Files	Email and Memo Communications
RCJSNIII0041500		Email from Jeffress, B. to Gyasi-twum, K. and Venne, S. re: Cash Management Policy	Email and Memo Communications
RCJSNIII0042129			Other
RCJSNIII0042130			Other
RCJSNIII0042139			Other
RCJSNIII0042140			Other
RCJSNIII0042510			Other
RCJSNIII0042512			Other
RCJSNIII0042513			Other
RCJSNIII0042514			Other
RCJSNIII0042517			Other
RCJSNIII0042530			Other
RCJSNIII0042531		Balance Sheet - Period 10 - 2011-10-01 with Clear Intercompany Payable	Internal & External Financial Statements
RCJSNIII0042777		I/C receivable at RFC	Email and Memo Communications
RCJSNIII0042778			Other
RCJSNIII0042928			Other
RCJSNIII0042929			Other
RCJSNIII0042994			Other
RCJSNIII0042995			Other
RCJSNIII0042996		Revolver Trial Balances (RFC/RFOC) - September 2011	Internal & External Financial Statements
RCJSNIII0047980			Other
RCJSNIII0047981		Intercompany Balance Information & Instructions	Internal & External Financial Statements
RCJSNIII0047982		RFG Intercompany Eliminations	Internal & External Financial Statements

Bates # / File Name	Docket #	Document Description	Category
RCJSNII0049180			Other
RCJSNII0049182		Accounting treatment	Internal & External Financial Statements
RCJSNII0049183			Other
RCJSNII0049184		Intercompany accounting T account	Bankruptcy Filings & Background Information
RCJSNII0049185			Other
RCJSNII0049309			Other
RCJSNII0049310			Other
RCJSNII0049801			Other
RCJSNII0049802			Other
RCJSNII0049803		ResCap - GL Trial Balance -12/31/2012	Internal & External Financial Statements
RCJSNII0050710			Other
RCJSNII0050711		Berkshire and Walter Asset Sales, Accounting Coordination, 1/31/2013	Bankruptcy Filings & Background Information
RCJSNII0050712			Other
RCJSNII0050713			Other
RCJSNII0051853			Other
RCJSNII0051855		ResCap - GL Trial Balance -9/30/2012	Internal & External Financial Statements
RCJSNII0051856			Other
RCJSNII0051857		RESI - GL Trial Balance -9/30/2012	Internal & External Financial Statements
RCJSNII0051858		RFC - GL Trial Balance -9/30/2012	Internal & External Financial Statements
RCJSNII0053760			Other
RCJSNII0053763		Intercompany Payables	Bankruptcy Filings & Background Information
RCJSNII0053764			Other
RCJSNII0053765			Other
RCJSNII0053766			Other
RCJSNII0053767		RESI - GL Trial Balance - 3/31/2008	Internal & External Financial Statements
RCJSNII0053768		RFC - GL Trial Balance - 3/31/2008	Internal & External Financial Statements
RCJSNII0053769			Other
RCJSNII0053770			Other
RCJSNII0053771			Other
RCJSNII0053772			Other
RCJSNII0053773		RESI - GL Trial Balance - 6/30/2008	Internal & External Financial Statements
RCJSNII0053774		RFC - GL Trial Balance - 6/30/2008	Internal & External Financial Statements
RCJSNII0053775			Other
RCJSNII0053776			Other
RCJSNII0053777			Other
RCJSNII0053778			Other
RCJSNII0053779		RESI - GL Trial Balance - 9/30/2008	Internal & External Financial Statements
RCJSNII0053780		RFC - GL Trial Balance - 9/30/2008	Internal & External Financial Statements
RCJSNII0053781			Other
RCJSNII0053782			Other
RCJSNII0053783			Other
RCJSNII0053784			Other
RCJSNII0053785		RESI - GL Trial Balance - 3/31/2009	Internal & External Financial Statements
RCJSNII0053786		RFC - GL Trial Balance - 3/31/2009	Internal & External Financial Statements
RCJSNII0053787			Other
RCJSNII0053788			Other
RCJSNII0053789		GMAC Mortgage - Trial Balance and Income Statement - 6/30/2009	Internal & External Financial Statements
RCJSNII0053790			Other

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RCJSNIII0053791		RESI - GL Trial Balance - 6/30/2009	Internal & External Financial Statements
RCJSNIII0053792		RFC - GL Trial Balance - 6/30/2009	Internal & External Financial Statements
RCJSNIII0053793			Other
RCJSNIII0053794			Other
RCJSNIII0053795			Other
RCJSNIII0053796		RESI - GL Trial Balance - 9/30/2009	Internal & External Financial Statements
RCJSNIII0053797		RFC - GL Trial Balance - 9/30/2009	Internal & External Financial Statements
RCJSNIII0053798		GMAC Mortgage - Trial Balance and Income Statement - 9/30/2009	Internal & External Financial Statements
RCJSNIII0055074		PATI debt forgiveness	Email and Memo Communications
RCJSNIII0055079			Other
RCJSNIII0056338		Cash management generated balances	Email and Memo Communications
RCJSNIII0056341		ResCap Intercompany Balances	Bankruptcy Filings & Background Information
RCJSNIII0056342		Intercompany Discussion, 2012	Email and Memo Communications
RCJSNIII0056345		ResCap Intercompany Balances	Bankruptcy Filings & Background Information
RCJSNIII0056756		Project Bounce Intercompany Payable Balances	Internal & External Financial Statements
RCJSNIII0056857			Other
RCJSNIII0056858			Other
RCJSNIII0056859		Cash management flow chart	Bankruptcy Filings & Background Information
RCJSNIII0057257			Other
RCJSNIII0057258		ResCap Intercompany Balances, Consolidated Version, 2/29/2012	Bankruptcy Filings & Background Information
RCJSNIII0057291			Other
RCJSNIII0057292		GSAP - Restatement and Trial Balances - 3/31/2012	Internal & External Financial Statements
RCJSNIII0057293			Other
RCJSNIII0057294		GSAP - Restatement and Trial Balances - 3/31/2012	Internal & External Financial Statements
RCJSNIII0057317			Other
RCJSNIII0057318		Liabilities Subject to Compromise at 5/13/2012	Internal & External Financial Statements
RCJSNIII0057319			Other
RCJSNIII0057320		ResCap, LLC, Liabilities Subject to Compromise - Open Items, Open Item as of 5/30/12	Bankruptcy Filings & Background Information
RCJSNIII0057329			Other
RCJSNIII0057330			Other
RCJSNIII0057331		ResCap Intercompany, Debtor-to-Non Debtor balances, 4/1/2012	Bankruptcy Filings & Background Information
RCJSNIII0057332			Other
RCJSNIII0057333			Other
RCJSNIII0057334		ResCap and Subsidiaries - GL Trial Balances at 5/13/2012	Internal & External Financial Statements
RCJSNIII0057342			Other
RCJSNIII0057343		Liabilities Subject to Compromise at 5/13/2012	Internal & External Financial Statements
RCJSNIII0057344			Other
RCJSNIII0057345			Other
RCJSNIII0057346			Other
RCJSNIII0057347			Other
RCJSNIII0057349		ResCap and Subsidiaries - Trial Balances at 5/13/2012	Internal & External Financial Statements
RCJSNIII0057350			Other
RCJSNIII0057351			Other
RCJSNIII0057352		Liabilities Subject to Compromise at 5/13/2012	Internal & External Financial Statements
RCJSNIII0057353			Other
RCJSNIII0057354		ResCap Intercompany Balances	Bankruptcy Filings & Background Information
RCJSNIII0057355			Other
RCJSNIII0057356			Other

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RCJSNII0057368		Liabilities Subject to Compromise at 5/13/2012	Internal & External Financial Statements
RCJSNII0057369		Residential Capital, LLC, et al. - Liabilities Subject to Compromise Matrix - Effect on Accounting Practices	Bankruptcy Filings & Background Information
RCJSNII0057370			Other
RCJSNII0057379			Other
RCJSNII0057380		Intercompany Discussion, 2012	Email and Memo Communications
RCJSNII0057385			Other
RCJSNII0057390			Other
RCJSNII0057392		ResCap Consolidated - Intercompany Balances - 5/13/2012	Internal & External Financial Statements
RCJSNII0057442			Other
RCJSNII0057443		Intercompany Borrowings and Reconciliation - [Period Unknown]	Internal & External Financial Statements
RCJSNII0057444			Other
RCJSNII0057445		FTI Report - Claims Processing including Intercompany Liability	Bankruptcy Filings & Background Information
RCJSNII0057458			Other
RCJSNII0057459		Intercompany Relationships	Email and Memo Communications
RCJSNII0057462			Other
RCJSNII0057552			Other
RCJSNII0057553		Intercompany	Email and Memo Communications
RCJSNII0057555		ResCap - Intercompany Balances (5/31/2012 & 9/30/2012) - FTI Review	Internal & External Financial Statements
RCJSNII0058065			Other
RCJSNII0058066		ResCap - GL Detail Run - April 2008	Internal & External Financial Statements
RCJSNII0058090		ResCap - GL Detail Run - March 2008	Internal & External Financial Statements
RCJSNII0058109			Other
RCJSNII0058110		2008 GL Query	Internal & External Financial Statements
RCJSNII0058111			Other
RCJSNII0058112		2007 GL Data Reconciliation including intercompany transactions	Internal & External Financial Statements
RCJSNII0058113			Other
RCJSNII0058114		2008 GL Extract including intercompany transactions	Internal & External Financial Statements
RCJSNII0058115			Other
RCJSNII0058117		ResCap Account Reconciliation Policies	Bankruptcy Filings & Background Information
RCJSNII0058155		ResCap Account Reconciliation Policies	Bankruptcy Filings & Background Information
RCJSNII0058167		2007 GL Extract including intercompany transactions	Internal & External Financial Statements
RCJSNII0058168		2007 GL Extract including intercompany transactions	Internal & External Financial Statements
RCJSNII0058169			Other
RCJSNII0058170		ResCap Account Reconciliation Policies	Bankruptcy Filings & Background Information
RCJSNII0058208		ResCap Account Reconciliation Policies	Bankruptcy Filings & Background Information
RCJSNII0058220		2007 GL Extract including intercompany transactions	Internal & External Financial Statements
RCJSNII0058221		2007 GL Extract including intercompany transactions	Internal & External Financial Statements
RCJSNII0058514		Equity Adjustments	Email and Memo Communications
RCJSNII0058516		RFC - October 2009 Balance Sheet (Unaudited)	Internal & External Financial Statements
RCJSNII0058554			Other
RCJSNII0058556		RESI/GMAC Bank/ResMor/ResCap Consol Trial Balance - 10/31/2009 (Unaudited)	Internal & External Financial Statements
RCJSNII0058559			Other
RCJSNII0058560		RESI/GMAC Bank/ResMor/ResCap Consol Trial Balance - 10/31/2009 (Unaudited)	Internal & External Financial Statements
RCJSNII0058563		Debt forgiveness	Email and Memo Communications
RCJSNII0058564			Other
RCJSNII0058610		Equity Adjustments	Email and Memo Communications
RCJSNII0058613		RFC - October 2009 Balance Sheet (Unaudited)	Internal & External Financial Statements
RCJSNII0058614			Other

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RCJSNIII0058616		RFC - October 2009 Balance Sheet (Unaudited)	Internal & External Financial Statements
RCJSNIII0059750		RFC Net Worth Covenants	Email and Memo Communications
RCJSNIII0074531		Bill of Sale and Transfer Agreement (Execution Copy)	Legal
RCJSNIII0082197			Other
RCJSNIII0082198			Other
RCJSNIII0082199			Other
RCJSNIII0082200			Other
RCJSNIII0082202			Other
rcjsnii10082203			Other
RCJSNIII0082208			Other
rcjsnii10082210			Other
rcjsnii10082213			Other
RCJSNIII0082215			Other
RCJSNIII0082216			Other
RCJSNIII0082262			Other
RCJSNIII0082263			Other
RCJSNIII0118386		Debt Forgiveness from GMAC Residential Holding Company to GMAC Mortgage	Email and Memo Communications
RCJSNIII0131858		Ally General Intercompany Accounting Policy	Internal & External Financial Statements
RCUCCJSN00007239		Audited Financial Statements of Residential Funding Company, LLC as of 12/31/2011	Internal & External Financial Statements
RCUCCJSN00007300			Other
RCUCCJSN00007301			Other
RCUCCJSN00007302			Other
RCUCCJSN00007502			Other
RCUCCJSN00007504			Other
RCUCCJSN00007508			Other
RCUCCJSN00007509			Other
RCUCCJSN00007510			Other
RCUCCJSN00007511			Other
RCUCCJSN00007513			Other
RCUCCJSN00007516			Other
RCUCCJSN00007520			Other
RCUCCJSN00010178			Other
RCUCCJSN00010228			Other
RCUCCJSN00012497		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012498		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012499		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012500		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012501		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012502		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012503		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012504		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012505		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012506		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012507		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012508		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012509		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012510		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012511		General ledger extract	General Ledger Transactional Data

[illegible]

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RCUCCJSN00012560		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012561		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012562		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012563		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012564		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012565		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012566		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012567		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012568		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012569		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012570		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012571		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012572		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012573		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012574		General ledger extract	General Ledger Transactional Data
RCUCCJSN00012575		General ledger extract	General Ledger Transactional Data
RCUCCJSN00030169		Intercompany loan detail on filing date	Internal & External Financial Statements
RCUCCJSN00030170		Interco graph (in April 20 Intercompany Analysis Report)	Internal & External Financial Statements
RCUCCJSN00030215		Debt Forgiveness Transactions from 1/1/2008 - 5/13/2012 (Petition)	Internal & External Financial Statements
RCUCCJSN00050365			Other
RCUCCJSN00050366			Other
RCUCCJSN00050367			Other
RCUCCJSN00050368			Other
RCUCCJSN00050369			Other
RCUCCJSN00050370			Other
RCUCCJSN00050371			Other
RCUCCJSN00050372			Other
RCUCCJSN00050373			Other
RCUCCJSN00050374			Other
RCUCCJSN10005622			Other
RCUCCJSN10005688		Email From James Young authorizing Debt Forgiveness	Email and Memo Communications
RCUCCJSN10011161		Email From James Young authorizing Debt Forgiveness	Email and Memo Communications
RCUCCJSN10025065		Approval for \$2.0 billion of ResCap forgiveness to RFC	Email and Memo Communications
RCUCCJSN10031823			Other
RCUCCJSN10032484			Other
RCUCCJSN10032487			Other
RCUCCJSN10032780			Other
RCUCCJSN10032788			Other
RCUCCJSN10032813			Other
RCUCCJSN10032820			Other
RCUCCJSN10032828			Other
RCUCCJSN10032835			Other
RCUCCJSN10038836			Other
RCUCCJSN10038909			Other
RCUCCJSN10208959			Other
RCUCCJSN10208961			Other
RCUCCJSN10209039			Other
RCUCCJSN10209041			Other

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RCUCCJSN10250359			Other
RCUCCJSN10252518			Other
RCUCCJSN10252582			Other
RCUCCJSN10293887		From: James Young, To: Cathy Dondzila, Tammy H., Tom Marano, Forgiveness of intercompany debt memo, 12/14/2009	Email and Memo Communications
RCUCCJSN10295626			Other
RCUCCJSN10295647			Other
RCUCCJSN10295655			Other
RCUCCJSN10354687		Email from Westman, B. to McDonald, B. and Renzi, M. re: Open Items for Various Requests	Email and Memo Communications
RCUCCJSN10354691		Residential Capital, LLC Accounting Operations - Open Items List	Other
RCUCCJSN10354692		Residential Capital, LLC Debt Forgiveness (January 1, 2008 - May 13, 2012)	Other
RCUCCJSN10357468		Email from Westman, B. to Dondzila, C. re: Interco File	Email and Memo Communications
RCUCCJSN10357470		ResCap Intercompany Balances Consolidated Version (5/13/2012)	Internal & External Financial Statements
RCUCCJSN10365228		Examiner Presentation - IC accounting overview, 12/4/2012	Bankruptcy Filings & Background Information
RCUCCJSN10371390			Other
RCUCCJSN10371391			Other
RCUCCJSN10371398			Other
RCUCCJSN10371399			Other
RCUCCJSN10371408			Other
RCUCCJSN10371409			Other
RCUCCJSN10383574			Other
RCUCCJSN10390867			Other
RCUCCJSN10427474			Other
RCUCCJSN10427475			Other
RCUCCJSN10427478			Other
RCUCCJSN10461561			Other
RCUCCJSN10461567			Other
RCUCCJSN10463436			Other
RCUCCJSN10465666			Other
RCUCCJSN10465669			Other
RCUCCJSN10465699			Other
RCUCCJSN10465701			Other
RCUCCJSN10465702			Other
RCUCCJSN10465704			Other
RCUCCJSN10467071			Other
RCUCCJSN10467082			Other
RCUCCJSN10473726			Other
RCUCCJSN10473734			Other
RCUCCJSN10566639		Email from Dondzila, C. to Young, J. re Refreshed RFC Equity Projection	Email and Memo Communications
RCUCCJSN10566662			Other
RCUCCJSN10566670			Other
RCUCCJSN10567368		Email from Haugen, S. to Bode, S. re: High Level Description of Solvency Entries	Email and Memo Communications
RCUCCJSN10605077		Memo from Young, J. to GMAC Inc. Board of Directors re: Request for Action by Board of Directors, GMAC Inc. Approval of Capital Allocation from ResCap to RFC and Certain of Its Subsidiaries	Email and Memo Communications
RCUCCJSN10692261			Other
RCUCCJSN106922612978989			Other
RCUCCJSN10692264		List created by MoFo that shows there should be a schedule of intercompany interest	Bankruptcy Filings & Background Information
RCUCCJSN10692265		Summary of Intercompany balances and schedule of interest payments	Internal & External Financial Statements
RCUCCJSN10692266			Other

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RCUCCJSN10692377			Other
RCUCCJSN10718209			Other
RCUCCJSN10718211			Other
RCUCCJSN10742580			Other
RCUCCJSN10744019		Ally Financial Inc., formerly GMAC Inc. Amended and Restated Loan Agreement dated as of 12/30/09	Legal
RCUCCJSN10745574			Other
RCUCCJSN10745614		Uncommitted Intercompany Advance Agreement	Legal
RCUCCJSN10780327			Other
RCUCCJSN10833618		Email from Ruhlin, J. to Dondzila, C. re: Intercompany Agreements	Email and Memo Communications
RCUCCJSN10881204			Other
RCUCCJSN10883521			Other
RCUCCJSN10883522			Other
RCUCCJSN10888066			Other
RCUCCJSN10891667			Other
RCUCCJSN10891668			Other
RCUCCJSN10891669			Other
RCUCCJSN10891684			Other
RCUCCJSN10891687			Other
RCUCCJSN10891969			Other
RCUCCJSN10891974			Other
RCUCCJSN10891977		Cash Balances including Intercompany Transactions	Internal & External Financial Statements
RCUCCJSN10891978		Post-Petition Intercompany Balance Summary, 11/3/2012	Bankruptcy Filings & Background Information
RCUCCJSN10891987		Cash Balances without Intercompany Movement of Cash	Email and Memo Communications
RCUCCJSN10891999		Cash Balances without Intercompany Movement of Cash	Email and Memo Communications
RCUCCJSN10892006			Other
RCUCCJSN10892015			Other
RCUCCJSN10895541		From: Joe Ruhlin, To: Tim McDonagh, intercompany interest payment details, 6/1/2012	Email and Memo Communications
RCUCCJSN10934309			Other
RCUCCJSN10934310			Other
RCUCCJSN10935402			Other
RCUCCJSN10935403		From: James Young, To: Jim Mackey, Request for action by the Board of Directors - Approval to adjust intercompany notes memo, 4/2011	Email and Memo Communications
RCUCCJSN10935407		Memo requesting intercompany debt forgiveness to be allowed	Email and Memo Communications
RCUCCJSN10962759		Email from Ruby, S. to Westman, B. re: Resolution of Ditech Issue	Email and Memo Communications
RCUCCJSN11077472			Other
RCUCCJSN11077708			Other
RCUCCJSN11077752			Other
RCUCCJSN11077934			Other
RCUCCJSN11077942			Other
RCUCCJSN11078338			Other
RCUCCJSN11078368			Other
RCUCCJSN11081836			Other
RCUCCJSN11081837			Other
RCUCCJSN11091668		Email from Horner, J. to Sullivan, C. re Legal Entity Report for 11/30/11	Email and Memo Communications
RCUCCJSN11091669		Consolidated ResCap Legal Entity - YTD November 2011	Other
RCUCCJSN11092270			Other
RCUCCJSN11186259		Meeting agenda, in attendance Jill Horner and Cathy Dondzila, meeting contained intercompany discussions, 10/10/2012	Email and Memo Communications
RCUCCJSN11186261			Other

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RCUCCJSN11241086			Other
RCUCCJSN11241093			Other
RCUCCJSN11241094			Other
RCUCCJSN11241095			Other
RCUCCJSN11243606		Request of Action from the BoD for approval of capital allocation within ResCap and certain of its subsidiaries	Email and Memo Communications
RCUCCJSN11254278		Special Examiner Presentation	Other
RCUCCJSN11254307			Other
RCUCCJSN11270924		Debt Forgiveness Schedule	Internal & External Financial Statements
RCUCCJSN11330021			Other
RCUCCJSN11330023			Other
RCUCCJSN11330048			Other
RCUCCJSN11448924		Email from Perlman, A. to Kook, J. among other re: Preliminary Chart of Accounts Strawman	Email and Memo Communications
RCUCCJSN11448925		SAP GGL Operational Accounts	Other
RCUCCJSN11465342		Debt Forgiveness on the Flume and Viaduct Notes	Email and Memo Communications
RCUCCJSN11624790			Other
RCUCCJSN11666201			Other
RCUCCJSN11666352			Other
RCUCCJSN11680080			Other
RCUCCJSN11680081			Other
RCUCCJSN116830153209658			Other
RCUCCJSN116830203209659			Other
RCUCCJSN116830253209660			Other
RCUCCJSN116830313209661			Other
RCUCCJSN116830393209662			Other
RCUCCJSN11683042			Other
RCUCCJSN116830433209664			Other
RCUCCJSN116830903209665			Other
RCUCCJSN11683095			Other
RCUCCJSN116830963209667			Other
RCUCCJSN116831433209668			Other
RCUCCJSN116831443209669			Other
RCUCCJSN116831523209670			Other
RCUCCJSN11683153		Summary of Top 10 Intercompany Relationships, 12/31/2012	Bankruptcy Filings & Background Information
RCUCCJSN11685937			Other
RCUCCJSN11685938			Other
RCUCCJSN11685939			Other
RCUCCJSN11690799			Other
RCUCCJSN11690804			Other
RCUCCJSN118604473277081			Other
RCUCCJSN118604483277082			Other
RCUCCJSN118604493277083			Other
RCUCCJSN118604503277084			Other
RCUCCJSN118604513277085			Other
RCUCCJSN11860454			Other
RCUCCJSN118604553277087			Other
RCUCCJSN118605023277088			Other
RCUCCJSN11860507			Other
RCUCCJSN118605083277090			Other

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RCUCCJSN11860553277091			Other
RCUCCJSN118605563277092			Other
RCUCCJSN118605643277093			Other
RCUCCJSN11860565			Other
rcuccjsn11922194			Other
RCUCCJSN11922198		ResCap Bank Account Structure at April 11, 2012	Bankruptcy Filings & Background Information
rcuccjsn11922208			Other
RCUCCJSN11979453		Draft - Debtors' Intercompany & Debt Forgiveness Presentation, 4/4/2013	Bankruptcy Filings & Background Information
RCUCCJSN20021816		Email from Szymik, F. to Whilinger, J. re: Interco Summary for Internal Distribution	Email and Memo Communications
RCUCCJSN20021817		ResCap Intercompany Balances Summary as of the Petition Date	Internal & External Financial Statements
RCUCCJSN20027424			Other
RCUCCJSN20027833			Other
RCUCCJSN20033109			Other
RCUCCJSN20033114			Other
RCUCCJSN20033249			Other
RCUCCJSN20033253			Other
RCUCCJSN20033254			Other
RCUCCJSN20037211			Other
RCUCCJSN20037674			Other
RCUCCJSN20038720			Other
RCUCCJSN20045765			Other
RCUCCJSN20045766			Other
RCUCCJSN20045767			Other
RCUCCJSN20047935			Other
RCUCCJSN20047936			Other
RCUCCJSN20051023		GMAC ResCap internal memo prepared by Barb Westman on 3/20/2012	Email and Memo Communications
RCUCCJSN20054889		Email from Westman, B. to Dondzila, C. re: GMACM Management Fee Writeup	Email and Memo Communications
RCUCCJSN20064737		Email from Dondzila, C. to Westman, D. re: Bounce - Intercompany Follow Up	Email and Memo Communications
RCUCCJSN20080786		Email from Dondzila, C. to Renzi, M. and Westman, B. re: Bounce - Intercompany Follow Up	Email and Memo Communications
RCUCCJSN20085299			Other
RCUCCJSN20090333			Other
RCUCCJSN20090334			Other
RCUCCJSN20090347			Other
RCUCCJSN20090357			Other
RCUCCJSN20090358			Other
RCUCCJSN20092910			Other
RCUCCJSN30000236			Other
RCUCCJSN30000243			Other
RCUCCJSN30000244			Other
RCUCCJSN30000245			Other
RCUCCJSN30001108			Other
RCUCCJSN30001110			Other
RCUCCJSN30001111			Other
rcuccjsn30001112			Other
RCUCCJSN30001113			Other
RCUCCJSN30001114			Other
rcuccjsn30001115			Other
RCUCCJSN30002097		Examiner List of Intercompany Files (and Bates numbers for various subjects) for UCC	Bankruptcy Filings & Background Information

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RCUCCJSN30002758		From: Barb Westman, To: Mark Renzi & Brian McDonald, Intercompany and OID discussion, 3/4/2013	Email and Memo Communications
RCUCCJSN30002763		Intercompany payables, document attached in email: RCUCCJSN30002758	Internal & External Financial Statements
RCUCCJSN30002764		Intercompany balances & debt forgiveness entries, attached in email: RCUCCJSN30002758	Internal & External Financial Statements
RCUCCJSN30002765		Intercompany capital injections, RCUCCJSN30002758	Legal
RCUCCJSN30003025		Email from Bazella, J. to Westman, B. and Renzi, M. re: Interco File	Email and Memo Communications
RCUCCJSN30004106		January 2013 Intercompany Analysis	Email and Memo Communications
RCUCCJSN30004112		Email body only, contains explanation of top intercompany balances	Email and Memo Communications
RCUCCJSN30005418		GMAC Residential Holding Corp Consolidated Financial Statements as of and for the years ended December 31, 2004 and 2003 (Restated)	Other
RCUCCJSN30005837		Summary of Top 10 Intercompany Relationships (Native), 12/31/2012	Bankruptcy Filings & Background Information
RCUCCJSN30006751		Summary of Intercompany Balances as of 9/30/2012	Internal & External Financial Statements
RCUCCJSN30006785		From: Cathy Dondzila, To: Brian McDonald, Intercompany follow-up response Alix's questions, 11/1/2012	Email and Memo Communications
RCUCCJSN30006795		Audited Financial Statements of ditech, LLC as of 12/31/2011	Internal & External Financial Statements
RCUCCJSN30006804		Audited Financial Statements of ditech, LLC as of 12/31/2008	Internal & External Financial Statements
RCUCCJSN30006824			Other
RCUCCJSN30006835		Audited Financial Statements of ditech.com, LLC as of 12/31/2007	Internal & External Financial Statements
RCUCCJSN30006849			Other
RCUCCJSN30006860			Other
RCUCCJSN30014296		Email from Westman, B. to Park, L. and Szymik, F. re: Legal Entity Trial Balance	Email and Memo Communications
RCUCCJSN30016049		Email from Westman, B. to Stern, J. and Renzi, M. re: Waterfall Questions	Email and Memo Communications
RCUCCJSN30017113			Other
RCUCCJSN30017115		Summary of Intercompany balances, netting to \$7.8 Billion	Bankruptcy Filings & Background Information
RCUCCJSN30017116		ResCap Restated Loan Agreement	Legal
RCUCCJSN30021675			Other
RCUCCJSN30023149		From: Cathy Dondzila, To: Mark Renzi & Barb Westman, Responses and discussion regarding intercompany questions, 4/22/2012	Email and Memo Communications
RCUCCJSN30023156			Other
RCUCCJSN30038469			Other
RCUCCJSN30047169		Intercompany Relationships 05-31-12-FTI Analysis 07-20-2012	Internal & External Financial Statements
RCUCCJSN30054571			Other
ResCap - Auditors (Deloitte PwC) Search Terms (4813-5214-5429-1)			Other
ResCap - Auditors (Deloitte PwC) Search Terms (4813-5214-5429-1) ZC			Other
ResCap - Debtors Search Terms (4828-0789-7365-1)			Other
ResCap - Debtors Search Terms (4828-0789-7365-1) ZC			Other
ResCap - Deloitte - Second Request for Documents (4836-8456-9621-2)			Other
ResCap - Deloitte - Second Request for Documents (4836-8456-9621-2) ZC			Other
ResCap - KPMG - Request for Documents (4816-0386-9205-3)			Other
ResCap - KPMG - Request for Documents (4816-0386-9205-3) ZC			Other
ResCap - KPMG Search Terms (4827-0258-1013-1)			Other
ResCap - KPMG Search Terms (4827-0258-1013-1) ZC comments			Other
ResCap - PwC - Second Request for Documents (4844-0612-0981-2)			Other
ResCap - PwC - Second Request for Documents (4844-0612-0981-2) ZC			Other
Response_to_September_30__2013_Letter_from_Dan_Perry			Legal
Schedule of Assets and Liabilities	548	RFC	SOALs
Schedule of Assets and Liabilities	549	ResCap HoldCo	SOALs
Schedule of Assets and Liabilities	550	GMACM	SOALs

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Schedule of Assets and Liabilities	551	Ditech, LLC	SOALs
Schedule of Assets and Liabilities	552	PATI Real Estate Holdings, LLC	SOALs
Schedule of Assets and Liabilities	553	DOA Holding Properties, LLC	SOALs
Schedule of Assets and Liabilities	554	DOA Properties IX (Lots-Other), LLC	SOALs
Schedule of Assets and Liabilities	555	RAHI A, LLC	SOALs
Schedule of Assets and Liabilities	556	EPRE LLC	SOALs
Schedule of Assets and Liabilities	557	Equity Investment I, LLC	SOALs
Schedule of Assets and Liabilities	558	ETS of Virginia, Inc	SOALs
Schedule of Assets and Liabilities	559	ETS of Washington, Inc	SOALs
Schedule of Assets and Liabilities	560	RAHI B, LLC	SOALs
Schedule of Assets and Liabilities	561	Executive Trustee Services, LLC	SOALs
Schedule of Assets and Liabilities	562	GMAC Model Home Finance I, LLC	SOALs
Schedule of Assets and Liabilities	563	RAHI Real Estate Holdings, LLC	SOALs
Schedule of Assets and Liabilities	564	GMAC Mortgage USA Corporation	SOALs
Schedule of Assets and Liabilities	565	GMAC Resi Hold Co	SOALs
Schedule of Assets and Liabilities	566	RCSF JV2004, LLC	SOALs
Schedule of Assets and Liabilities	567	GMAC RH Settlement Services, LLC	SOALs
Schedule of Assets and Liabilities	568	GMACM Borrower LLC	SOALs
Schedule of Assets and Liabilities	569	Residential Accredited Loans, Inc	SOALs
Schedule of Assets and Liabilities	570	GMACM REO LLC	SOALs
Schedule of Assets and Liabilities	571	GMACR Mortgage Products, LLC	SOALs
Schedule of Assets and Liabilities	572	GMAC-RFC Hold Co	SOALs
Schedule of Assets and Liabilities	573	Residential Asset Securities Corporation	SOALs
Schedule of Assets and Liabilities	574	HFN Reo Sub II, LLC	SOALs
Schedule of Assets and Liabilities	575	Home Connects Lending Services, LLC	SOALs
Schedule of Assets and Liabilities	576	Residential Services of Alabama, LLC	SOALs
Schedule of Assets and Liabilities	577	Homecomings Financial Real Estate Holdings, LLC	SOALs
Schedule of Assets and Liabilities	578	Residential Consumer Services of Ohio, LLC	SOALs
Schedule of Assets and Liabilities	579	Homecomings Financial, LLC	SOALs
Schedule of Assets and Liabilities	580	Ladue Associates, Inc	SOALs
Schedule of Assets and Liabilities	581	Residential Consumer Services of Texas, LLC	SOALs
Schedule of Assets and Liabilities	582	Passive Asset Transactions, LLC	SOALs
Schedule of Assets and Liabilities	583	PATI A, LLC	SOALs
Schedule of Assets and Liabilities	584	Residential Consumer Services, LLC	SOALs
Schedule of Assets and Liabilities	585	PATI B, LLC	SOALs
Schedule of Assets and Liabilities	586	RFC Asset Holdings II, LLC	SOALs
Schedule of Assets and Liabilities	587	Residential Funding Mortgage Exchange, LLC	SOALs
Schedule of Assets and Liabilities	588	RFC Asset Management, LLC	SOALs
Schedule of Assets and Liabilities	589	Residential Funding Mortgage Securities I, LLC	SOALs
Schedule of Assets and Liabilities	590	RFC Borrower LLC	SOALs
Schedule of Assets and Liabilities	591	RFC Construction Funding, LLC	SOALs
Schedule of Assets and Liabilities	592	Residential Funding Mortgage Securities II, LLC	SOALs
Schedule of Assets and Liabilities	593	RFC REO LLC	SOALs
Schedule of Assets and Liabilities	594	Residential Funding Real Estate Holdings, LLC	SOALs
Schedule of Assets and Liabilities	595	RFC SFJV-2002, LLC	SOALs
Schedule of Assets and Liabilities	596	Residential Mortgage Real Estate Holdings, LLC	SOALs
Schedule of Assets and Liabilities	597	RFC-GSAP Servicer Advance, LLC	SOALs
Schedule of Assets and Liabilities	649	Residential Asset Mortgage Products, Inc	SOALs

Bates # / File Name	Docket #	Document Description	Category
UCC02853		Intercompany Relationships Spreadsheet	Other
UCC12846		From: Mark Renzi, To: AlixPartners, Email providing summary of top ten intercompany notes, 9/17/2012	Email and Memo Communications
UCC12848		Intercompany Balance Detail of Top Ten Accounts, 4/24/2012	Bankruptcy Filings & Background Information
UCC12852			Other
UCC14249		Email from Dove, A. to Goren, T. re: ResCap - Intercompany Rollforward	Email and Memo Communications
UCC14251			Other
UCC142512906182			Other
UCC17941			Other
UCC179412906433			Other
UCC17942		ResCap Monthly Intercompany Balances from 12/31/2007 - 10/31/2012	Internal & External Financial Statements
UCC179422906434			Other
UCC18655			Other
UCC18658		Monthly Changes in Intercompany Relationships	Internal & External Financial Statements
UCC24985			Other
UCC249852907050			Other
UCC24986		Index of relevant Intercompany documents as classified by AlixPartners	Bankruptcy Filings & Background Information
UCC25033			Other
UCC25289			Other
UCC27521		Written Consent from the BoD for the forgiveness of ResCap debt	Email and Memo Communications
CCM00199890		Liquidity Update - GMAC LLC Board of Directors Meeting	Other
DEH_001_1_00000001-01776-2		ResCap Notes From Intercompany Receivable Call	Other
ResCap 10Q/A		10Q for the Period ending June 30, 2009, filed on August 25, 2009	Internal & External Financial Statements
B. Westman Deposition - 10-15-13 Transcript		Deposition Transcript of B. Westman on 10/15/2013	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_01 (Deposition Agreement)			Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_02 (RCJSNII10041452)		Email: Intercompany files, cash management, with exhibits	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_03 (RCJSNII10041500)		Email: Cash management policy	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_04 (RCJSNII10037951)		Email: Intercompany process memo	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_05 (RCJSNII00003340)		ResCap IC certification	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_06 (RCUCCJSN30016049)		Email: Top 10 IC Relationships agreements	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_07 (RCUCCJSN200064737)		Email: Bounce Intercompany	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_08 (EXAM12263518)		Email: Cash management process	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_09 (Docket 586)			Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_10 (Docket 683)			Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_11 (Docket 684)			Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_12 (Docket 685)			Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_13 (Docket 687)			Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_14 (RCJSNII10028118)		Email: Bounce Intercompany	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_15 (UCC12846)		Email: TOP 10 IC	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_16 (RCUCCJSN30002758)		Email: debt forgiveness	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_17 (RCJSNII00025680)		Email: cash movement into debt	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_18 (EXAM00345894)		FTI IC presentation April 4, 2013	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_19 (EXAM00107037)			Deposition Transcripts and Exhibits

Bates # / File Name	Docket #	Document Description	Category
B. Westman Deposition Exhibit_20 (EXAM00107030)		Amended and Restated Intercompany Loan Agreement	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_21 (EXAM00107022)			Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_22 (EXAM00107300)			Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_23 (EXAM12263381)		Email: IC balances "flip"	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_24 (RCJSNII10034044)		Email: subs filings	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_25 (RCUCCJSN10895541)		Email: cash management	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_26 (RCUCCJSN10692261)		Email: GL data	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_27 (EXAM00123277)			Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_28 (EXAM00234281)			Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_29 (EXAM00125358)			Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_30 (RCUCCJSN30014296)		Email: IC recoverable support	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_31 (RCJSNII10015251)		Email: IC impairment	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_32 (EXAM12412896)		Email: IC impairment	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_33 (RCJSNII10074531)			Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_34 (RCUCCJSN30003025)		Email: Key IC balances	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_35 (RCUCCJSN30016049)		Email: IC balance generation	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_36 (RC40000118)			Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_37 (RCJSNII10131858)			Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_38 (RCUCCJSN20080786)		Email: Bounce Intercompany	Deposition Transcripts and Exhibits
B. Westman Deposition Exhibit_39 (RCUCCJSN00030215)		Debt forgiveness	Deposition Transcripts and Exhibits
C. Dondzila Deposition - 10-17-2013 Transcript		Deposition Transcript of Cathy Dondzila on 10-17-2013	Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_01			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_02			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_03			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_04			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_05			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_06			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_07			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_07a			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_08			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_09			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_10			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_11			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_12			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_13			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_14			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_15			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_16			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_17			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_18			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_19			Deposition Transcripts and Exhibits
C. Dondzila Deposition Exhibit_28			Deposition Transcripts and Exhibits

Bates # / File Name	Docket #	Document Description	Category
C. Dondzila Deposition Exhibit_31			Deposition Transcripts and Exhibits
T. Hamzehpour Deposition - 10-18-2013 Transcript		Deposition Transcript of T. Hamzehpour on 10/15/2013	Deposition Transcripts and Exhibits
T. Hamzehpour Deposition Exhibit_1			Deposition Transcripts and Exhibits
T. Hamzehpour Deposition Exhibit_2			Deposition Transcripts and Exhibits
T. Hamzehpour Deposition Exhibit_3			Deposition Transcripts and Exhibits
T. Hamzehpour Deposition Exhibit_4			Deposition Transcripts and Exhibits
T. Hamzehpour Deposition Exhibit_5			Deposition Transcripts and Exhibits
T. Hamzehpour Deposition Exhibit_6			Deposition Transcripts and Exhibits

Exhibit B

Expert Report of Michael Fazio, dated October 18, 2013

Residential Capital, LLC

Expert Report of Michael Fazio – Recovery Analysis

October 18, 2013

Residential Capital,
LLC

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Executive Summary

Executive Summary

Overview of Report

- This report (the “Report”) has been prepared by Michael Fazio on behalf of Houlihan Lokey Capital, Inc. (“Houlihan Lokey”) at the request of White & Case LLP and Milbank, Tweed, Hadley & McCloy LLP as counsel to the Ad Hoc Group of Junior Secured Noteholders (“Ad Hoc Group”) of the 9.625% Junior Secured Guaranteed Notes due 2015 (“JSNs”) and counsel to UMB Bank, N.A. as Trustee for the JSNs (“Trustee”), and Akin Gump Strauss Hauer & Feld LLP as special litigation counsel to the Trustee, in connection with that certain consolidated adversary proceeding (Adv. Pro. Nos. 13-01343 and 13-01277 (collectively, the “Adversary Proceeding”)) relating to the Chapter 11 proceedings of Residential Capital, LLC (“ResCap”, the “Company” or the “Debtors”) in the U.S. Bankruptcy Court for the Southern District of New York, Case No. 12-12020
- In conjunction with preparing the Report, Houlihan Lokey has made the reviews, analyses and inquiries deemed necessary and appropriate. See Appendices: Due Diligence Conducted

Overview of Report (cont.)

- Houlihan Lokey has been asked by counsel to provide sensitivity outputs on the Debtors' Collateral Scenario (as defined herein) recoveries to estimate the impact of certain issues subject to Phase II of the Adversary Proceeding
 - Counsel has requested the sensitivity output for the following three scenarios:
 - A Intercompany Claims: Utilize Debtors' Collateral Scenario assumptions, but include all pre-petition intercompany claims as valid and as scheduled in the SOALs
 - B AFI Contribution: Utilize Debtors' Collateral Scenario assumptions, but assume the JSNs have a direct lien on certain of the contemplated \$2.1 billion AFI contribution
 - C Both Intercompany Claims & AFI Contribution: Utilize Debtors' Collateral Scenario assumptions, but assume both intercompany claims and the JSNs' lien on a portion of the AFI contribution are valid
 - In addition to these scenarios, Houlihan Lokey has been asked by counsel to show the impact on recoveries in Scenarios A, B and C assuming the subordination of the RMBS Trust and Monoline claims as indicated in the Debtors' Disclosure Statement
- Counsel has also asked Houlihan Lokey to calculate the aggregate value recoverable from individual deficiency claims asserted by the JSNs in the following two scenarios:
 - The Debtors' Collateral Scenario
 - The Debtors' Collateral Scenario, but assuming the Committee prevails in certain challenges to the JSNs' collateral being pursued in the Adversary Proceeding
- Counsel has also asked Houlihan Lokey to assess the potential impact on intercompany claim value from the reinstatement of approximately \$16.6 billion in previously-forgiven intercompany claims

Summary of Recovery Waterfall Model

Summary of
Recovery Waterfall
Model

Introduction

- Houlihan Lokey has developed a recovery model for ResCap (the “Waterfall Model”) in order to determine the value of intercompany claims and resulting total recovery for the JSNs based on assumptions provided by:
 - Counsel
 - The Expert Report of Robert S. Bingham and the Expert Report of Raymond T. Lyons, Esquire, both dated October 18, 2013
 - The Debtors, either through their Disclosure Statement or related disclosures / discussions
- The Waterfall Model calculates the recovery for creditors at each legal entity and includes the impact of intercompany claims, Equity Pledges (as defined herein) and deficiency claims (if any)
- The Waterfall Model was developed by Houlihan Lokey professionals during the pre-petition period and has since been maintained and refined as additional information becomes available and additional or different assumptions become relevant
- I understand that the Debtors and the Debtors’ advisors have developed and maintained a similar recovery model
 - I also understand that prior to and subsequent to the petition date, Houlihan Lokey professionals and the Debtors’ advisors have run scenarios through their respective models and agreed that both the Debtors’ and Houlihan Lokey’s models produce substantially similar results when using the same assumptions
- The following two pages summarize the general design, methodology and assumptions of the Waterfall Model
 - As a general matter, the assumptions utilized in the Debtors’ Collateral Scenario (as defined herein) in this Report are intended to be consistent with those utilized by the Debtors in their Disclosure Statement and updates thereto. The Debtors’ Collateral Scenario shown herein is for illustrative purposes only and is utilized solely to isolate and quantify the impact of certain individual assumptions on the Collateral Scenario’s projected recoveries
 - Houlihan Lokey is providing no opinion on the merits or validity of any assumptions utilized herein

Summary of
Recovery Waterfall
Model

Waterfall Model Architecture & Methodology

Debtors & Legal Structure

- Includes 27 of the 51 Debtors, including the two borrowing entities created in connection with ResCap's debtor-in-possession facility ("Barclays DIP")
- The remaining 24 Debtors are excluded from the Debtors' trial balances, because they do not have distributable assets of value or are otherwise not material or impactful on the recovery analysis results⁽¹⁾

Financial Assets

- The Waterfall Model utilizes the Debtors' April 30, 2013 trial balances containing the book value of assets at each entity. The Debtors carry their assets at fair value in accordance with GAAP. The Debtors' estimate of the JSNs' secured recovery in the Debtors' Collateral Scenario includes estimates of the recovery value of the remaining unsold assets. As indicated in the Disclosure Statement, the Debtors' estimate of recovery value is more conservative than the Debtors estimate of fair value of the assets in the Debtors' trial balances. For the purposes of this Report, the Debtors' estimates have been utilized
 - The Company-provided trial balances also include a designation of assets pledged to each collateral silo / debt facility; for the purposes of this Report, such allocation has been utilized
- For the purposes of this Report, certain items from the trial balances are excluded, including:
 - Intercompany claims (analyzed separately as described on subsequent slides)
 - Non-economic assets (e.g., certain consolidated held-for-investment balances, contingent repurchase obligations and similar assets that are recognized by the Company in accordance with GAAP, but are assumed in this Report to provide no recovery value)
- For the purposes of this Report, certain additional value is assumed in the recovery calculations and added to the assets in the trial balances, consistent with the Debtors' assumptions, including:
 - \$68 million from true-up associated with Ocwen transaction (\$51 million allocated to JSNs' collateral) and \$24 million from the assets of non-Debtor subsidiaries (\$2 million allocated to JSNs' collateral)

Secured Debt Obligations

- Outstanding debt facility balances at April 30, 2013
 - *First Lien Facilities:* Ally LOC balance of \$380 million and Ally Revolver balance of \$747 million
 - *JSNs:* Claim varies based on scenario being utilized (as described on subsequent pages); the Debtors' Collateral Scenario claim is \$2,223 million, reflecting no adjustments from the Adversary Proceeding

(1) See Appendices for more detail; as a point of comparison, in the Debtors' Disclosure Statement (ECF #4819), the Debtors provide recovery analyses detail for 15 legal entities; a Summary of Unscheduled Entities is provided for the others, which shows no assets for the remaining unscheduled Debtors

Summary of
Recovery Waterfall
Model

Waterfall Model Architecture & Methodology (cont.)

Admin / Priority Claims

- After satisfaction of secured debt recovery, distributable value, including from the contribution of Ally Financial Inc. (“AFI”), is used to satisfy administrative / priority / wind-down claims (“Admin Claims”)
- The amount and allocation of Admin Claims is consistent with the Debtors’ Disclosure Statement, including \$250 million against Residential Funding Company, LLC (“RFC”) and \$836 million against GMAC Mortgage, LLC (“GMACM”)⁽¹⁾

General Unsecured Claims (“GUC”)

- Distributable value after satisfaction of Admin Claims is used to satisfy GUCs, which share in distributable value pro-rata at each legal entity
- The amount and allocation of GUCs is consistent with the Debtors’ Disclosure Statement⁽²⁾

Inter-Company Claims

- The Debtors’ Collateral Scenario excludes the impact of pre-petition intercompany claims
- When assumed in this Report as valid / not re-characterized, intercompany claims are included in GUCs and the amounts and allocation are per the Debtors’ Statements of Assets and Liabilities (“SOALs”). Net balances are utilized (i.e., receivables and payables between the same two entities are assumed to be netted)

Equity Value / Pledges

- Any value remaining at each legal entity after the satisfaction of secured debt obligations, Admin Claims and GUCs is distributed to each entity’s parent entity
- If the parent entity has pledged this equity value to a secured debt obligation (“Equity Pledges”), the equity is used to satisfy that obligation, otherwise the equity is assumed to be available to GUCs at that parent entity

Other Recovery Calculation Notes

- *Secured Recovery:* The satisfaction of secured debt facilities is assumed to be from (i) pledged collateral at borrower / issuer entities, (ii) pledged collateral at guarantor entities, (iii) pledged collateral at all other entities and (iv) Equity Pledges (if applicable), in that order
- *Unsecured Recovery:* Any remaining deficiency claims are treated pari passu to GUCs and asserted at a debt facility’s borrower / issuer and guarantor entities. The amount of deficiency claim asserted varies by entity and equals the claim less amounts already recovered from the entity as a secured recovery

(1) Per disclosures in the Expert Report of Mark Renzi dated September 20, 2013 (“Renzi Report”), \$10 million of such claims against GMACM are assumed to be asserted against Executive Trustee Services, LLC (“ETS”), and \$27 million of such claims are assumed to have been charged to the JSNs’ collateral since April 30, 2013 (assumed from GMACM, which is allocated approximately 77% of total Admin Claims in the Disclosure Statement)

(2) Per disclosures in the Renzi Report, \$5 million of additional GUCs above what is shown in the Disclosure Statement is assumed to be allocated to ETS

Recovery Scenarios & Analyses

Recovery Scenarios &
Analyses

Debtors' Collateral Scenario

- As used herein, the Debtors' "Collateral Scenario" includes the secured recovery assumptions and methodology employed by the Debtors in their Disclosure Statement, as subsequently updated or amended
- The Disclosure Statement and certain related filings originally indicated the JSNs' secured recovery totaled \$1.689 billion
- This amount has since been updated by the Debtors to incorporate the impact of subsequent developments, primarily the Ocwen true-up
- The Debtors' projected JSNs' secured recovery includes Debtors' estimates of the recovery value of remaining unsold assets. The Debtors' estimates are more conservative than the fair value of the assets in the Debtors' trial balances. For purposes of this Report, Houlihan Lokey is using the Debtors' estimates to isolate and highlight the change in the JSNs' recovery from the assumptions discussed herein
- The Debtors' estimate of the JSNs' secured recovery includes certain assumptions that are being litigated in the Adversary Proceeding, including:
 - Adequate Protection (Debtors' Collateral Scenario ascribes zero value to adequate protections claims for the JSNs)
 - Purchase price allocation (Debtors' Collateral Scenario ascribes zero value to intangible / going-concern / goodwill)
 - AFI contribution allocation (Debtors' Collateral Scenario assumes zero value is subject to JSNs' liens)
 - Intercompany claims (Debtors' Collateral Scenario ascribes zero value)
 - Recovery on unsold assets (Debtors' Collateral Scenario makes certain disputed estimates of recovery values)
- It is not the intent of this Report to opine on these disputed issues which the Court will address in the Adversary Proceeding. Houlihan Lokey has developed a Debtors' Collateral Scenario which replicates the Debtors' assumptions and projected results for the JSNs
 - All assumptions known to be utilized by the Debtors are incorporated, with the exception of projected Admin Claim allocations beyond what has already been charged to JSNs' collateral⁽¹⁾⁽²⁾, in an attempt to develop a comparable result from which to layer in additional assumptions

Collateral Scenario Secured Recovery (\$ in millions)

	Renzi Report	Houlihan Model
Cash & Remaining Assets	\$ 2,513	\$ 2,512
Equity Pledges	99	100
Pledged Intercompany Claims	-	-
Pledged AFI Contribution	-	-
Impact of Ocwen True-Up	51	51
Revolver Pay-Down	(747)	(747)
Additional Expense Allocation	(180)	(27)
Total Secured Recovery	1,735	1,888
Plus: Add-Back of Addt'l. Exp. ⁽²⁾	153	NA
Adj. Secured Recovery	\$ 1,888	\$ 1,888

(1) Trial balances in the Waterfall Model are as of April 30, 2013

(2) The Renzi Report indicates \$27 million in stipulated costs have been charged to the JSNs' collateral since April 30, 2013; implying an estimated \$153 million in additional Admin Claims that the Debtors intend to charge against the JSNs' collateral

Adjusted Intercompany Claim & AFI Contribution Scenarios

- Houlihan Lokey has been asked by counsel to provide sensitivity outputs on the Debtors' Collateral Scenario recoveries to estimate the impact of certain issues subject to Phase II of the Adversary Proceeding
- Counsel has requested the following three scenarios:
 - A Intercompany Claims: Utilize Debtors' Collateral Scenario assumptions, but include all pre-petition intercompany claims as valid and as scheduled in the SOALs
 - B AFI Contribution: Utilize Debtors' Collateral Scenario assumptions, but assume the JSNs have a direct lien on certain of the contemplated \$2.1 billion AFI contribution, which includes the following assumptions
 - \$624.5 million recovered from Residential Capital, LLC ("HoldCo") on account of breach of contract claims related to the first 2009 tax allocation agreement⁽¹⁾
 - \$338.8 million recovered from GMACM on account of breach of contract claims related to failure to pay value of purchased mortgage servicing rights⁽¹⁾
 - \$234.6 million recovered from GMACM on account of breach of contract claims related to the misallocation of net revenues on loans brokered by GMACM⁽¹⁾
 - The remaining \$902.1 million is allocated pro-rata to claimants / legal entities in the same manner as the \$2.1 billion allocation contemplated by the Disclosure Statement
 - C Both Intercompany Claims & AFI Contribution: Utilize Debtors' Collateral Scenario assumptions, but assume both intercompany claims and the JSNs' lien on a portion of the AFI contribution are valid

(1) Per the Expert Report of Raymond T. Lyons, Esquire dated October 18, 2013

Recovery Scenarios &
Analyses

Impact of Adjusted Intercompany Claim & AFI Contribution Scenarios

- Counsel has informed Houlihan Lokey that the JSNs' ultimate recovery will be limited to the amount of their allowed claim, including accrued post-petition interest and unpaid fees / expenses if the JSNs are deemed over-secured
- The table below shows the maximum secured recovery available to the JSNs under the scenarios previously described and is presented to illustrate the JSNs' total collateral value and amount of over-collateralization under the scenarios assumed

JSNs' Maximum Secured Recovery (\$ in millions)

			A	B	C
	Debtors' Collateral Scenario		W/ InterCo.	W/ AFI Contr.	W/ Both
	Renzi Report	Houlihan Model	Houlihan Model	Houlihan Model	Houlihan Model
Cash & Remaining Assets	\$ 2,513	\$ 2,512	\$ 2,512	\$ 2,512	\$ 2,512
Equity Pledges	99	100	238	100	158
Pledged Intercompany Claims	-	-	602	-	342
Pledged AFI Contribution	-	-	-	1,198	1,198
Impact of Ocwen True-Up	51	51	51	51	51
Revolver Pay-Down	(747)	(747)	(747)	(747)	(747)
Additional Expense Allocation	(180)	(27)	(27)	(27)	(27)
Total Secured Recovery	1,735	1,888	2,628	3,086	3,486
Plus: Add-Back of Addt'l. Exp.	153	NA	NA	NA	NA
Adj. Secured Recovery	\$ 1,888	\$ 1,888	\$ 2,628	\$ 3,086	\$ 3,486
<i>Memo: Incremental Collateral</i>			\$ 740	\$ 1,198	\$ 1,598

- As shown above, Scenarios A, B and C result in incremental JSNs' collateral ranging from \$740 million to \$1,598 million
 - The assumption that intercompany claims remain valid increases JSNs' collateral value through both "Pledged Intercompany Claims" (value of intercompany claims owed to the JSNs' issuer and guarantor entities, on which counsel has indicated the JSNs' lien directly attaches) and Equity Pledges (the increased equity value of certain entities that hold intercompany receivables and whose equity is pledged to the JSNs)

Recovery Scenarios &
Analyses

Impact of RMBS Trust & Monoline Claim Subordination on Adjusted Scenarios

- In addition to the scenarios previously described, Houlihan Lokey has also been asked by counsel to show the impact on recoveries in Scenarios A, B and C assuming the subordination of the RMBS Trust and Monoline claims indicated in the Debtors' Disclosure Statement as allowed GUCs
- The table below shows the maximum secured recovery available to the JSNs under the scenarios previously described, but assuming the subordination of RMBS Trust and Monoline claims to GUCs

JSNs' Maximum Secured Recovery (\$ in millions)					
Debtors' Collateral Scenario	A		B		C
	W/ InterCo.	W/ AFI Contr.	W/ Both		
	Renzi Report	Houlihan Model	Houlihan Model	Houlihan Model	Houlihan Model
Cash & Remaining Assets	\$ 2,513	\$ 2,512	\$ 2,512	\$ 2,512	\$ 2,512
Equity Pledges	99	100	563	100	338
Pledged Intercompany Claims	-	-	1,864	-	1,285
Pledged AFI Contribution	-	-	-	1,198	1,198
Impact of Ocwen True-Up	51	51	51	51	51
Revolver Pay-Down	(747)	(747)	(747)	(747)	(747)
Additional Expense Allocation	(180)	(27)	(27)	(27)	(27)
Total Secured Recovery	1,735	1,888	4,215	3,086	4,609
Plus: Add-Back of Addt'l. Exp.	153	NA	NA	NA	NA
Adj. Secured Recovery	\$ 1,888	\$ 1,888	\$ 4,215	\$ 3,086	\$ 4,609
<i>Memo: Incremental Collateral</i>			\$ 2,327	\$ 1,198	\$ 2,721

- As shown above, the subordination of RMBS Trust and Monoline claims substantially increases the JSNs' collateral value if intercompany claims are not re-characterized or waived
 - The subordination of claims does not impact Scenario B relative to the previous slide, as Scenario B does not derive any value from intercompany claims (which increase in value with the subordination of GUCs)

Impact of Previously-Forgiven Intercompany Claims

- Houlihan Lokey has been asked by counsel to assess the potential impact of reinstating intercompany claims forgiven by the Debtors between 2008 and the petition date⁽¹⁾
- According to Article II, Section K of the Disclosure Statement: “On numerous occasions, where the existence of an intercompany payable on a Debtor’s balance sheet threatened the solvency and net worth thresholds required under external funding agreements, or by federal or state regulations, the putative debt obligations were forgiven. Additionally, putative debt obligations were forgiven among the Debtors and certain non-Debtor subsidiaries in connection with the Debtors’ international transactions and the dissolution of entities. Approximately \$16.6 billion of debt was forgiven without consideration from 2007 through the Petition Date.”
 - Houlihan Lokey has been provided with information on approximately \$16.6 billion of intercompany claims forgiven between the beginning of 2008 and the petition date⁽²⁾
- Generally, the reinstatement or addition of additional intercompany claims between Debtors will have a positive impact on the JSNs’ secured recovery if intercompany claims are assumed valid / not re-characterized. However, there are two primary ways in which the reinstatement of forgiven claims could potentially reduce the secured recovery JSNs receive from intercompany claims outstanding on the petition date

Offset / Reduce Existing Intercompany Claim Balances

- The reinstatement of intercompany claims between the same legal entities as intercompany claims existing on the petition date, but in the opposite lending direction, could potentially reduce or offset the amount of intercompany claims at the petition date

Dilute Existing Intercompany Claim Recoveries

- The reinstatement of certain intercompany claims could reduce intercompany recoveries to the JSNs if the reinstated claims are both: (i) owed from an entity that is an obligor for an existing intercompany claim that benefits the JSNs, and (ii) owed to an entity that is not a JSNs’ issuer, guarantor or Equity Pledge entity
- These two issues are addressed in more detail on the following slides

(1) Such reinstatement assumes that the claims which were forgiven are successfully avoided and reinstated

(2) Per RCUCCJSN11270924

Impact of Previously-Forgiven Intercompany Claims (cont.)

Offset / Reduce Existing Intercompany Claim Balances

- In the secured recovery amounts shown in this Report, the JSNs only derive intercompany claim secured recovery from claims between entities included in the Waterfall Model. Therefore, only the reinstatement of claims between these entities could offset and decrease the secured recovery benefit shown herein
- Of the \$16.6 billion of previously-forgiven intercompany claims identified, \$9.1 billion are between entities in the Waterfall Model (see Appendices)
 - Of this \$9.1 billion, \$2.6 billion are between legal entities with existing intercompany claim relationships, but in the opposite lending direction
 - There are \$2.2 billion of previously-forgiven intercompany claims owed from RFC to HoldCo, which if reinstated could offset a \$2.0 billion existing intercompany claim owed from HoldCo to RFC. If the reinstated intercompany claim is allowed to offset / partially net against the existing claim, the adjusted net balance would be a \$0.2 billion claim from RFC to HoldCo, which would reduce the value of the intercompany claims to the JSNs
 - The other \$0.4 billion of previously-forgiven claims are in the opposite lending direction of existing intercompany claims with outstanding balances of \$5 million or less
 - \$6.5 billion of previously-forgiven intercompany claims are between legal entities that have no existing intercompany claim in the opposite lending direction. As a result, the reinstatement of these intercompany claims would generally increase intercompany claim value to the JSNs (as the JSNs would have a direct lien on certain of the receivables and an indirect benefit from others through Equity Pledges)
- If the forgiveness of these \$9.1 billion of intercompany claims is successfully avoided and the claims are reinstated and added to the Waterfall Model (and all existing intercompany claims are assumed valid / not re-characterized), the JSNs' collateral value is equal to \$2.467 billion under Scenario A (as compared to \$2.628 billion under Scenario A on slide 11)

Impact of Previously-Forgiven Intercompany Claims (cont.)

Dilute Outstanding Intercompany Claim Recoveries

- Of the \$16.6 billion of previously-forgiven intercompany claims identified, there are \$1.3 billion that could dilute existing intercompany claim recovery that otherwise benefit the JSNs. These previously-forgiven claims are owed from legal entities in the Waterfall Model to legal entities that are not a JSNs' issuer, guarantor or Equity Pledge entity
 - Seven of these intercompany claim relationships totaling \$0.9 billion are between legal entities in the Waterfall Model, and therefore their negative impact is already reflected in the analysis described on the previous slide
 - The remaining \$0.3 billion of previously-forgiven intercompany claims are owed from legal entities in the Waterfall Model to non-Debtor entities that are not included in the Waterfall Model
- If the forgiveness of these \$0.3 billion of intercompany claims is successfully avoided and the claims are reinstated as GUCs at their respective Waterfall Model legal entities, the JSNs' collateral value under Scenario A decreases from \$2.467 billion (as reflected on the prior slide) to \$2.451 billion
 - Approximately 40% of these previously-forgiven intercompany claims are obligations of lower-tier ResCap subsidiaries, and thus their reinstatement has no impact / dilution on the benefit the JSNs' otherwise receive from intercompany claims

Other Impacts

- Approximately \$6.3 billion of the previously-forgiven \$16.6 billion are owed to legal entities in the Waterfall Model from entities not included in the Waterfall Model. A majority of these receivables are owed to JSNs' issuer, guarantor or Equity Pledge entities
 - Any recovery on these intercompany claims if reinstated would increase the JSNs' secured recovery

Recovery Scenarios &
Analyses

Impact of Deficiency Claim Aggregation

- Houlihan Lokey has also been asked by counsel to calculate the total value recovered from individual deficiency claims by the JSNs under the Debtors' Collateral Scenario, utilizing the following assumptions
 - The JSNs assert a deficiency claim (if under-secured) at each of their issuer and five guarantor entities equal to the total allowed JSNs' claim less secured recovery from that specific entity
 - The total amount of deficiency claims asserted by the JSNs (when aggregated across individual entities) is larger than the total amount of the JSNs' allowed claim
 - As a result, it is possible for the JSNs to recover more from their deficiency claims than is required to satisfy their total allowed claim
- These assumptions result in a \$1.888 billion secured recovery and \$767 million deficiency recovery (without consideration of intercompany claims or a direct lien on the AFI contribution)
- This analysis confirms that even if the Debtors' disputed valuation is used, the JSNs recover in full on their prepetition claim. Additionally, there is excess recovery available to pay the JSNs post-petition interest

JSNs' Total Recovery By Entity (\$ in millions)

	Issuer	Guarantors						Grand Total
	HoldCo	GMACM	GMACM HoldCo	RFC	RFC HoldCo	Home-Comings	All Other	
Total Secured Recovery ⁽¹⁾⁽²⁾	\$ 159	\$ 1,576	\$ -	\$ 152	\$ -	\$ -	\$ 0	\$ 1,888
Memo: Deficiency Claim	2,063	646	2,223	2,070	2,223	2,223	NA	NA
Plus: Deficiency Recovery ⁽³⁾	390	136	0	242	-	0	-	767
Initial Total Recovery	\$ 549	\$ 1,712	\$ 0	\$ 394	\$ -	\$ 0	\$ 0	\$ 2,655

(1) Waterfall Model's recreation of Debtors' Renzi Report secured recovery valuation; excludes impact of all currently-litigated issues

(2) The value of equity pledges is included in the parent entity that pledges such equity, including the Barclays DIP borrowers

(3) Waterfall Model's projected recovery output; differs from Debtors' recovery allocation proposed under the Disclosure Statement, as (i) deficiency recovery is not limited by the amount of the allowed claim; (ii) the Debtors' allocate additional Admin Claims to the JSNs' collateral beyond what has already been charged and (iii) the Debtors do not assume the JSNs have a deficiency claim, rather allocate enough collateral to the JSNs to repay the JSNs' assumed claim in full

Recovery Scenarios &
Analyses

Impact of Deficiency Claim Aggregation (cont.)

- Houlihan Lokey has also been asked by counsel to calculate the total value recovered from individual deficiency claims by the JSNs under the Debtors' Collateral Scenario, utilizing the assumptions on the previous slide, but also assuming the Committee prevails in certain challenges to the JSNs' collateral being pursued in the Adversary Proceeding, specifically:
 - \$127 million aggregate value of collateral not encumbered in favor of the JSNs, per the Expert Report of Marc E. Landy dated September 20, 2013 ("Landy Report")
 - \$284 million aggregate value of preference assets, per the Landy Report
 - For the purposes of this analysis, it is assumed that 87% of the value from liens challenged by the Committee is allocated to GMACM, with the remainder at RFC. This assumption is based on the distribution of the fair market value of the subject assets at the petition date as identified in the Landy Report
- These assumptions result in a \$1.477 billion secured recovery and \$950 million deficiency recovery (without consideration of intercompany claims or a direct lien on the AFI contribution)
- This analysis confirms that even if the Debtors' disputed valuation is used and the Committee's collateral challenges are successful, the JSNs recover in full on their prepetition claim. Additionally, there is excess recovery available to pay a portion of the JSNs' post petition interest

JSNs' Total Recovery By Entity (\$ in millions)

	Issuer		Guarantors					Grand Total
	HoldCo	GMACM	GMACM HoldCo	RFC	RFC HoldCo	Home- Comings	All Other	
Total Secured Recovery ⁽¹⁾⁽²⁾	\$ 159	\$ 1,211	\$ -	\$ 107	\$ -	\$ -	\$ 0	\$ 1,477
Memo: Deficiency Claim	2,063	1,012	2,223	2,116	2,223	2,223	NA	NA
Plus: Deficiency Recovery ⁽³⁾	390	304	0	256	-	0	-	950
Initial Total Recovery	\$ 549	\$ 1,515	\$ 0	\$ 363	\$ -	\$ 0	\$ 0	\$ 2,427

(1) Waterfall Model's recreation of Debtors' Renzi Report secured recovery valuation; excludes impact of all currently-litigated issues, except Committee's collateral challenges listed

(2) The value of equity pledges is included in the parent entity that pledges such equity, including the Barclays DIP borrowers

(3) Waterfall Model's projected recovery output; differs from Debtors' recovery allocation proposed under the Disclosure Statement, as (i) deficiency recovery is not limited by the amount of the allowed claim; (ii) the Debtors' allocate additional Admin Claims to the JSNs' collateral beyond what has already been charged and (iii) the Debtors do not assume the JSNs have a deficiency claim, rather allocate enough collateral to the JSNs to repay the JSNs' assumed claim in full

Deficiency Claim Aggregation Conclusion

- As shown on the previous slide, even if it is assumed that the Committee prevails on its collateral challenges in the Adversary Proceeding and the JSNs' secured recovery from the Debtors' Collateral Scenario is reduced by \$411 million, the JSNs still recover at least the full amount of their assumed allowed claim of \$2,223 million as a result of the JSNs' ability to assert multiple deficiency claims at their issuer and guarantor legal entities, and there is excess recovery available to pay at least a portion of the JSNs' post-petition interest

Select Issues With Debtors' Hypothetical Chapter 7 Liquidation Analysis

- The Debtors' Liquidation Analysis, which provides low and high liquidation recovery scenarios under which the JSNs are shown to not recover their full \$2,223 million assumed allowed claim, is misleading for several reasons:
 - The Debtors' liquidation analysis ascribes zero value to claims against AFI, despite the \$2.1 billion settlement between ResCap and AFI contemplated under the Debtors' Plan of Reorganization and the claims identified by the Examiner, which include approximately \$3.1 billion of ResCap causes-of-action deemed "likely to prevail" or "more than likely to prevail" and approximately \$5.5 billion of total causes-of-action
 - Counsel has informed me that claims against AFI will survive in a liquidation and therefore it is inappropriate to ascribe zero value to such claims
 - The Debtors' liquidation analysis ascribes zero value to intercompany claims
 - The Debtors' liquidation analysis also makes certain disputed assumptions about the size and priority of unsecured claims

Conclusions

Conclusions

Summary of Conclusions

- Based on the analysis contained herein, I have reached the conclusions as set forth herein

Houlihan Lokey Capital, Inc.



Michael Fazio, Managing Director

Appendices

Appendices

Schedule of Intercompany Claims

Schedule of
Intercompany Claims

Scheduled Intercompany Claims

ECF Number	Lender (Receiving Entity)	Borrower (Paying Entity)	Claim (\$ mm)	JSNs Recovery Impact
0549	Residential Capital, LLC	GMAC Residential Holding Company, LLC	\$ 3,295.6	Direct Lien
0548	Residential Funding Company, LLC	Residential Capital, LLC	1,955.0	Direct Lien
0579	Homecomings Financial, LLC	Residential Funding Company, LLC	1,251.5	Direct Lien
0582	Passive Asset Transactions, LLC	GMAC Mortgage, LLC	689.2	Equity Pledge
0561	Executive Trustee Services, LLC	GMAC Mortgage, LLC	276.5	Equity Pledge
0548	Residential Funding Company, LLC	RFC Asset Holdings II, LLC	231.9	Direct Lien
0548	Residential Funding Company, LLC	GMAC Mortgage, LLC	133.7	Direct Lien
0565	GMAC Residential Holding Company, LLC	GMAC Mortgage, LLC	108.0	Direct Lien
0550	GMAC Mortgage, LLC	GMAC Residential Holding Company, LLC	58.2	Direct Lien
0575	Home Connects Lending Services, LLC	GMAC Residential Holding Company, LLC	54.6	-
0567	GMAC RH Settlement Service, LLC	Home Connects Lending Services, LLC	50.0	Equity Pledge
0588	RFC Asset Management, LLC	Residential Funding Company, LLC	45.7	Equity Pledge
0549	Residential Capital, LLC	GMAC Residential Holding Company, LLC	38.3	Direct Lien
0595	RFC SFJV-2002, LLC	RFC Asset Management, LLC	36.3	-
0550	GMAC Mortgage, LLC	CAP RE of Vermont LLC	17.5	Direct Lien
0566	RCSFJV2004, LLC	Residential Funding Company, LLC	17.0	-
0579	Homecomings Financial, LLC	RFC Asset Holdings II, LLC	11.9	Direct Lien
0548	GMAC Res Fund of Canada	Residential Funding Company, LLC	11.4	-
0550	GMAC Mortgage, LLC	Executive Trustee Services, LLC	10.9	Direct Lien
0550	GMAC Mortgage, LLC	GMAC RH Settlement Service, LLC	9.6	Direct Lien
0582	Passive Asset Transactions, LLC	GMAC Mortgage, LLC	7.8	Equity Pledge
0548	Residential Funding Company, LLC	GMAC Mortgage, LLC	6.0	Direct Lien
0548	Residential Funding Company, LLC	RFC SFJV-2002, LLC	5.8	Direct Lien
0588	RFC Asset Management, LLC	RCSFJV2004, LLC	5.7	Equity Pledge
0548	Residential Funding Company, LLC	Equity Investments I, LLC	5.2	Direct Lien
0548	Residential Funding Company, LLC	DOA Holding Properties, LLC	3.7	Direct Lien
0550	GMAC Mortgage, LLC	Homecomings Financial, LLC	3.0	Direct Lien
0550	GMAC Mortgage, LLC	Home Connects Lending Services, LLC	3.0	Direct Lien
0549	Residential Capital, LLC	GMAC Mortgage, LLC	2.7	Direct Lien
0595	RFC SFJV-2002, LLC	RCSFJV2004, LLC	2.6	-

Source: Debtors' SOALs (as noted)

Schedule of
Intercompany Claims

Scheduled Intercompany Claims (cont.)

ECF Number	Lender (Receiving Entity)	Borrower (Paying Entity)	Claim (\$ mm)	JSNs Recovery Impact
0551	ditech, LLC	GMAC Mortgage, LLC	2.6	Equity Pledge
0562	GMAC Model Home Finance I, LLC	Residential Funding Company, LLC	2.0	Equity Pledge
0549	Residential Capital, LLC	RFC Asset Holdings II, LLC	1.7	Direct Lien
0565	GMAC Residential Holding Company, LLC	GMAC Mortgage, LLC	1.5	Direct Lien
0558	ETS of Virginia, Inc.	Executive Trustee Services, LLC	1.2	-
0564	GMAC Mortgage USA Corporation	GMAC Mortgage, LLC	0.6	Equity Pledge
0584	Residential Consumer Services, LLC	GMAC Mortgage, LLC	0.5	Equity Pledge
0550	GMAC Mortgage, LLC	Residential Consumer Services, LLC	0.5	Direct Lien
0591	RFC Construction Funding, LLC	Residential Funding Company, LLC	0.4	Equity Pledge
0561	Executive Trustee Services, LLC	Residential Funding Company, LLC	0.4	Equity Pledge
0586	RFC Asset Holdings II, LLC	Passive Asset Transactions, LLC	0.3	Equity Pledge
0550	GMAC Mortgage, LLC	Home Connects Lending Services, LLC	0.2	Direct Lien
0550	GMAC Mortgage, LLC	Executive Trustee Services, LLC	0.2	Direct Lien
0550	GMAC Mortgage, LLC	CAP RE of Vermont LLC	0.2	Direct Lien
0558	ETS of Virginia, Inc.	Executive Trustee Services, LLC	0.2	-
0549	Residential Capital, LLC	Residential Funding Company, LLC	0.1	Direct Lien
0548	Residential Funding Company, LLC	DOA Properties IX (Lots-Other), LLC	0.1	Direct Lien
0549	Residential Capital, LLC	GMAC RFC Europe Limited	0.0	Direct Lien
0550	GMAC Mortgage, LLC	ETS of Washington, Inc.	0.0	Direct Lien
0558	ETS of Virginia, Inc.	GMAC Mortgage, LLC	0.0	-
0561	Executive Trustee Services, LLC	ETS of Washington, Inc.	0.0	Equity Pledge
0548	Residential Funding Company, LLC	Home Connects Lending Services, LLC	0.0	Direct Lien
0550	GMAC Mortgage, LLC	Executive Trustee Services, LLC	0.0	Direct Lien
0564	GMAC Mortgage USA Corporation	GMAC Mortgage, LLC	0.0	Equity Pledge
0550	GMAC Mortgage, LLC	ditech, LLC	0.0	Direct Lien
0550	GMAC Mortgage, LLC	ETS of Virginia, Inc.	0.0	Direct Lien
0595	RFC SFJV-2002, LLC	Homecomings Financial, LLC	0.0	-
0579	Homecomings Financial, LLC	RFC Asset Management, LLC	0.0	Direct Lien

Source: Debtors' SOALs (as noted)

Schedule of
Intercompany Claims

Debt Forgiveness by Year

Debt Forgiveness by Year⁽¹⁾ (\$ in millions)

Forgiven By	In Favor Of	Entity Status	Year					Grand Total
			2008	2009	2010	2011	2012	
Residential Capital, LLC	Residential Funding Co., LLC	Debtor	\$ 2,000	\$ 151	\$ -	\$ -	\$ -	\$ 2,151
	GMAC RFC Europe Limited	Non Debtor/Active	1,800	-	-	-	-	1,800
	GMAC - RFC (UK) Limited	Sold 9/30/2010	725	371	80	-	-	1,176
	GMAC RFC Investment B.V.	Sold 10/01/2010	154	435	-	-	-	589
	Investments BV GX1	SPE/Active	-	165	285	3	-	452
	RFC UK Ltd Viaduct	SPE/Active	15	175	231	-	-	420
	GMAC Res Fund of Canada	Non Debtor/Active	154	5	-	-	-	159
	Australia GMAC RFC	Sold 7/02/2009	23	122	-	-	-	145
	Viaduct (no.7)	SPE/Active	-	-	-	-	134	134
	Financiera Auritec, S.A.	Non Debtor/Active	-	39	-	-	-	39
	GMAC-RFC Property Finance Ltd	Non Debtor/Active	-	33	-	-	-	33
	PREEMAC 2 NL NETH B.V.	SPE/Active	-	-	19	3	-	22
	Subtotal		\$ 4,871	\$ 1,495	\$ 615	\$ 5	\$ 134	\$ 7,120
GMAC Residential Holding Co LLC	GMAC Mortgage LLC	Debtor	\$ -	\$ 2,520	\$ -	\$ -	\$ -	\$ 2,520
Residential Funding Co., LLC	RFC Asset Holdings II, LLC	Debtor	\$ 1,228	\$ -	\$ -	\$ -	\$ -	\$ 1,228
	GMAC Model Home Finance, LLC	Sold 6/2008	481	-	-	-	-	481
	Equity Investment I, LLC	Debtor	392	-	-	-	-	392
	RC Properties I, LLC	Dissolved 12/30/2011	-	88	-	-	-	88
	CMH Holdings, LLC	Non Debtor/Active	48	-	-	-	-	48
	DOA Properties IX, LLC	Debtor	-	-	-	45	-	45
	DOA Holding Properties, LLC	Debtor	43	0	-	-	-	43
	DOA Properties I, LLC	Dissolved 8/09/2011	31	-	-	-	-	31
	Equity Investment IV	Dissolved 8/09/2011	-	21	-	-	-	21
	KBOne, LLC	Sold 6/2008	18	-	-	1	-	18
	DOA Properties II, LLC	Dissolved 8/09/2011	14	-	-	-	-	14
	RFC-GSAP Servicer Advance, LLC	Debtor	7	-	-	-	-	7
	DOA Properties IV, LLC	Dissolved 12/30/2011	-	-	-	7	-	7
	Developers of Hidden Springs	Dissolved 12/30/2011	6	-	-	-	-	6
	DOA Holdings NoteCo, LLC	Dissolved 4/12/2012	-	-	-	5	-	5
	REG-PFH, LLC	Dissolved 12/30/2001	5	-	-	-	-	5
	LenOne, LLC	Sold 6/2008	4	-	-	0	-	4
	RFC Construction Funding LLC	Debtor	-	-	-	2	-	2
	Hidden Springs Sewer Company	Sold 9/23/2009	2	-	-	-	-	2
	GMAC Model Home I, LLC	Debtor	-	1	-	-	-	1

(1) Per RCUCCJSN11270924

Schedule of
Intercompany Claims

Debt Forgiveness by Year (cont.)

Debt Forgiveness by Year⁽¹⁾ (\$ in millions)

Forgiven By	In Favor Of	Entity Status	Year					Grand Total
			2008	2009	2010	2011	2012	
Residential Funding Co., LLC	Ameriland LLC	Dissolved 12/30/2011	1	-	-	-	-	1
	GCMTH, LLC	Sold 6/2008	0	-	-	0	-	1
	DOA Properties IIIB, LLC	Sold 9/30/2008	-	-	-	0	-	0
	DOA Properties V, LLC	Dissolved 12/30/2011	0	-	-	-	-	0
	DOA Properties VIII, LLC	Cancelled 6/06/2008	-	0	-	-	-	0
	RFC Resort Funding LLC	Sold 7/23/2008	-	-	-	0	-	0
	DOA Properties VII, LLC	Dissolved 8/09/2011	0	-	-	-	-	0
	Subtotal		\$ 2,280	\$ 111	\$ -	\$ 61	\$ -	\$ 2,452
Passive Asset Transactions LLC	Flume (no.8)	SPE/Active	\$ -	\$ -	\$ 351	\$ -	\$ 53	\$ 404
	GX CE Funding II B.V.	SPE/Active	-	-	311	-	-	311
	Subtotal		\$ -	\$ -	\$ 662	\$ -	\$ 53	\$ 715
RFC Asset Holdings II, LLC	CMH Holdings, LLC	Sold to CMH 6/2008	\$ -	\$ -	\$ -	\$ 209	\$ -	\$ 209
Homecomings Financial, LLC	GMAC Model Home Finance, LLC	Sold 6/2008	\$ -	\$ -	\$ -	\$ 0	\$ -	\$ 0
	DOA Properties IIIB, LLC	Sold 9/30/2008	-	-	-	0	-	0
	KBOne, LLC	Sold 6/2008	-	-	-	0	-	0
	LenOne, LLC	Sold 6/2008	-	-	-	0	-	0
	Subtotal		\$ -	\$ -	\$ -	\$ 0	\$ -	\$ 0
Subtotal of Top Interco Notes			\$ 7,150	\$ 4,126	\$ 1,277	\$ 275	\$ 187	\$ 13,015
GMAC Model Home Finance, LLC CMH Holdings, LLC Flume (no.8) GX CE Funding II B.V. DOA Holding Properties, LLC Remaining	Various		\$ 636	\$ -	\$ -	\$ 503	\$ -	\$ 1,139
	Various		-	-	-	457	-	457
	Various		-	-	351	-	53	404
	Various		-	-	311	-	-	311
	Various		-	-	-	268	-	268
	Various		89	-	-	773	134	997
Total			\$ 7,876	\$ 4,126	\$ 1,938	\$ 2,276	\$ 374	\$ 16,589
Memo: % of Total			47%	25%	12%	14%	2%	100%

(1) Per RCUCJ/SN11270924

Schedule of
Intercompany Claims

Stratification of Previously-Forgiven Intercompany Claims

Previously-Forgiven Intercompany Claim Summary (\$ in millions)

Category	Relationships	Amount	Comments
Offset / Reduce Existing InterCo Claims	30	\$ 9,061	Claims between the same legal entities as existing intercompany claims
Dilute Existing InterCo Claims	28	1,272	Claims owed from entities that are obligors on existing intercompany claims
Less: Duplicates	(7)	(923)	Claims included in both categories above
Claims Benefiting JSNs' Recovery	49	6,328	Additional value into Debtors' estates (receivables from entities outside Waterfall Model)
Other / No Impact	5	850	No impact on Debtors' Collateral Scenario (claims between entities outside Waterfall Model)
Total	105	\$ 16,589	

Appendices

Legal Entities

Legal Entities

Waterfall Model Entities

Debtors Included In Waterfall Model

- GMAC-RFC Holding Company, LLC
- Residential Funding Company, LLC
- Homecomings Financial, LLC
- RFC Borrower LLC (DIP Borrower)
- RFC Asset Holdings II, LLC
- Equity Investments I, LLC
- Residential Funding Mortgage Exchange, LLC
- RFC Asset Management, LLC
- RFC SFJV-2002, LLC
- RCSFJV2004, LLC
- GMAC Model Home Finance I, LLC
- DOA Holding Properties, LLC
- DOA Properties IX (Lots-Other), LLC
- RFC Construction Funding, LLC
- Residential Capital, LLC
- GMAC Mortgage, LLC
- Executive Trustee Services, LLC
- Residential Consumer Services, LLC
- GMAC Mortgage USA Corporation
- ETS of Washington, Inc
- ETS of Virginia, Inc.
- GMACM Borrower LLC (DIP Borrower)
- Ditech, LLC
- GMAC Residential Holding Company, LLC
- GMAC RH Settlement Service, LLC
- Home Connects Lending Services, LLC
- Passive Asset Transactions, LLC

Non-Debtors Included In Waterfall Model

- GMAC Model Home Finance, LLC
- CMH Holdings, LLC
- GMEN 04 Variable Funding Trust
- GMAC Mortgage Servicer Advance Fund

Debtors Excluded From Waterfall Model

- EPRE LLC
- GMACM REO LLC
- GMACR Mortgage Products, LLC
- HFN REO Sub II, LLC
- Homecomings Financial Real Estate Holdings, LLC
- Ladue Associates, Inc.
- PATI A, LLC
- PATI B, LLC
- PATI Real Estate Holdings, LLC
- RAHI A, LLC
- RAHI B, LLC
- RAHI Real Estate Holdings, LLC
- Residential Accredit Loans, Inc.
- Residential Asset Mortgage Products, Inc.
- Residential Asset Securities Corporation
- Residential Consumer Services of Alabama, LLC
- Residential Consumer Services of Ohio, LLC
- Residential Consumer Services of Texas, LLC
- Residential Funding Mortgage Securities I, Inc.
- Residential Funding Mortgage Securities II, Inc.
- Residential Funding Real Estate Holdings, LLC
- Residential Mortgage Real Estate Holdings, LLC
- RFC – GSAP Servicer Advance, LLC
- RFC REO LLC

Appendices

Due Diligence Conducted

Due Diligence
Conducted

Due Diligence Conducted

In conjunction with preparing the Report, Houlihan Lokey has made the reviews, analyses and inquiries we deemed necessary and appropriate, including, but not limited to, the following:

- ECF #s 548-595 (Debtors' SOALs)
- ECF # 4819 (Corrected Solicitation Version of the Disclosure Statement and Joint Chapter 11 Plan)
- RENZI00000001 (April 30, 2013 Trial Balances)
- RENZI00000002 (Estimated Recovery On Remaining Assets)
- RENZI00000003 (Ocwen True-Up Summary)
- EXAM00345894 (ResCap – Intercompany Transactions Presentation)
- RCUCCJSN00012496 (Post-Petition Intercompany Claims)
- RCUCCJSN00030213 (Draft Trial Balance)
- RCUCCJSN11270924 (Forgiven Intercompany Claim Balances)
- Expert Report of Mark Renzi dated September 20, 2013
- JSNs' Indenture Dated as of June 6, 2008
- JSNs' Amended and Restated Third Priority Pledge and Security Agreement and Irrevocable Proxy Dated December 30, 2009

Appendices

Expert Qualifications

Biography

Michael Fazio

Mr. Fazio is a Managing Director in Houlihan Lokey's Financial Restructuring Group and Co-Head of the firm's European Financial Institutions Group. Mr. Fazio previously lead the firm's Global Portfolio Valuation Practice and its New York office Financial Advisory Services Practice. He brings nearly three decades of experience in advisory services in connection with acquisitions, divestitures, corporate strategy, operational oversight, and restructurings for financial institutions. He advised the Official Committee of Unsecured Creditors of Lehman Brothers Holdings, Inc. in connection with the company's bankruptcy. As part of that engagement, he valued and restructured the significant derivatives and special purpose vehicle portfolios of Lehman Brothers and was involved in oversight of the Lehman Banks. He previously advised the Official Committee of Unsecured Creditors of Refco, Inc. in connection with its bankruptcy and advised in the restructurings of the structured investment vehicles Cheyne and Mainsail II. He also advised a committee of bondholders of CIT Group in their recent \$3 billion financing. Mr. Fazio is based in the firm's London office. Mr. Fazio is a member of the firm's management committee

Before joining Houlihan Lokey, Mr. Fazio was President and Chief Operating Officer of Comdisco, Inc., an \$8 billion equipment-leasing and technology services company, which he led through the bankruptcy process. Earlier, he served as Executive Vice President/Managing Director and COO-Americas of Deutsche Bank AG, managing the integration of Deutsche Bank NA and Bankers Trust Corp., as well as directing all non-front office functions in the Americas (Legal, Controlling, Risk Management, Real Estate, and Operations). He chaired the bank's regional operating committee and was a member of the executive committee

Mr. Fazio began his career at Arthur Andersen LLP, where he was partner-in-charge of the New York Banking, Brokerage and Investment Banking Industry practice in his last position with the firm. His responsibilities there included serving as lead partner in the firm's relationship with J.P. Morgan, Bankers Trust, Bank of America, and Deutsche Bank. He was a member of the firm's Financial Markets Global Advisory Group, responsible for setting the strategic direction of the firm's industry program, developing methodology, marketing, and implementation

Mr. Fazio received a joint B.B.A./MBA, with honors, in Accounting from Pace University. He was a Certified Public Accountant and a member of AICPA. Mr. Fazio is a Series 7, 24, 79, and 63 certified representative

Appendices

Compensation of Expert

Compensation of
Expert

Compensation of Expert

- Houlihan Lokey is receiving a professional fee, reflected in its Engagement Letter, in the total amount of \$2,500,000, for conducting the expert analyses and opinions contained in the expert reports provided by Houlihan Lokey personnel. No portion of those fees is contingent upon any conclusions reached by Houlihan Lokey or the outcome of the Chapter 11 proceedings

Exhibit C

Expert Report of Raymond T. Lyons, Esq., dated October 18, 2013

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

_____)	
In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, et. al.,)	Chapter 11
)	
Debtors.)	Jointly Administered
_____)	

EXPERT REPORT OF RAYMOND T. LYONS, ESQUIRE

Dated: October 18, 2013

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I. THE OPINION OF RAYMOND T. LYONS, ESQUIRE

A. THE EXPERT

1. Retention

I prepared, with the assistance of Fox Rothschild LLP (“Fox Rothschild”), this opinion (the “Opinion”) at the request of (a) White & Case LLP and Milbank, Tweed, Hadley & McCloy LLP, co-counsel to (i) the Ad Hoc Group of Junior Secured Noteholders (“Ad Hoc Group”) of the 9.625% Junior Secured Guaranteed Notes due 2015 (“JSNs”) and (ii) UMB Bank, N.A. as Trustee for the JSNs (“Notes Trustee”), and (b) Akin Gump Strauss Hauer Feld LLP, as special litigation counsel to the Trustee relating to the Chapter 11 proceedings of Residential Capital, LLC (“ResCap”, the “Company” or the “Debtors”) in the United States Bankruptcy Court for the Southern District of New York, Case No. 12-12020. I was asked to provide my opinion as to the reasonable settlement value of each of the claims identified in the Report of Arthur J. Gonzalez, Esquire, As Examiner, released June 26, 2013 (“Examiner’s Report”). I have also been asked to give my opinion as to the reasonable allocation of the \$2.1 billion dollar settlement fund provided by AFI among the various settled claims. I and Fox Rothschild are being compensated at Fox Rothschild’s usual and customary hourly billing rates.

2. Qualifications

Prior to joining Fox Rothschild on July 1, 2013, I served as a United States Bankruptcy Judge for the District of New Jersey for over 14 years. I conducted settlement conferences in cases assigned to me and for my colleagues in the District of New Jersey. While on the bench I was authorized by the Court of Appeals for the Third Circuit to serve as mediator in the U.S. Bankruptcy Court for the District of Delaware. Among the matters I mediated in Delaware was the plan of reorganization for Washington Mutual, Inc. involving twenty-two classes of claims and interests and \$7 billion in distributions.

I completed the forty-hour Bankruptcy Mediation Training program in the first class conducted by the American Bankruptcy Institute and St. John’s University School of Law. I am a member of the Dispute Resolution Section of the New Jersey State Bar Association and the Justice Marie L. Garibaldi ADR Inn of Court. I am on the Roster of Mediators for the American Arbitration Association (AAA), the CPR Panel of Distinguished Neutrals for the International Institute For Conflict Prevention and Resolution (CPR), and the Panel of Arbitrators and Mediators for Federal Arbitration, Inc. (FedArb). I am also on the court-annexed Panel of Mediators in the U.S. Bankruptcy Courts for the Southern District of New York, the Eastern District of New York, the District of Delaware and the Western District of Pennsylvania.

Before taking the bench, I was in private practice for more than 25 years as a commercial lawyer with a concentration in chapter 11 bankruptcy. I taught banking law as an adjunct professor at Seton Hall University School of Law. I received my J.D. from Seton Hall University School of Law and my LL.M. in tax law from New York University School of Law.

Other than the opinions that I have written in my position as a United States Bankruptcy Judge, I have not authored any publications in the last 10 years. I have not testified as an expert either at trial or by deposition in the last four years.

3. Limitations

The opinions expressed herein represent my reasonable professional judgment as to the matters expressed herein, based upon the facts presented in the Examiner's Report and are not guarantees that a court would reach any particular result. In fact, the opinion of settlement amount for each claim is not intended to predict the legal outcome of the claim but rather to estimate the settlement value based on the possibility of various alternative legal outcomes.

My Opinion is limited to the matters stated herein. No opinion is implied or may be inferred beyond the matters expressly stated. The Opinion is given as of the date hereof, and I expressly disclaim any obligation to update or supplement my opinions contained herein to reflect any facts or circumstances that may hereafter come to my attention or any changes in laws which may hereafter occur.

B. ORGANIZATION OF THE OPINION

For ease of reference I have organized the Opinion using, for the most part, the same sections as Section I of the Examiner's Report. Section A sets out the background relating to my employment as the expert, my qualifications, the scope of my retention and opinion, and the limitations of the Opinion. Section B discusses the Organization of the Opinion. Section C explains the Examiner's investigation. Section D explains the methodology employed in arriving at my Opinion regarding the settlement values of the potential claims of the estate and the potential claims of third parties and a summary of my Opinion. Section E follows the outline of potential Estate Causes of Action as set forth in Summary Section I.E of the Examiner's Report, and sets forth my opinion regarding the likely settlement amount of each claim. Section F contains a chart of all Estate Causes of Action identified by the Examiner with my opinion on the reasonable settlement value of each claim. Section G relates to the proposed post-petition transactions and agreements. Section H follows the outline of potential third party claims as set forth in Summary Section I.H of the Examiner's Report and contains my opinion concerning the reasonable settlement value of each of those claims. Section I contains my opinion regarding the reasonable allocation of the \$2.1 billion dollar settlement fund provided by AFI among the various settled claims.

C. THE INVESTIGATION

The Examiner did an evaluation of the facts, including review and examination of almost nine million pages of documents produced by twenty-three different parties, ninety-nine formal interviews of eighty-three witnesses, sixty-six meetings with interested parties, and review of multiple written submissions from a dozen parties. Unless specifically noted, I have relied on the factual findings of the Examiner in reaching my opinion regarding the settlement values of the claims identified by the Examiner.

To the extent that a potential claim identified by the Examiner in his report referenced a pertinent contract or order, such contract or order was reviewed to confirm the Examiner's interpretation of the terms and effect of that contract or order. A list of the documents that were reviewed in order to render my Opinion is attached hereto as Exhibit A.

D. METHODOLOGY OF EXPERT AND SUMMARY OF CONCLUSIONS

To render my Opinion, the Examiner's Report has been carefully reviewed in full to assign a settlement value to each of the potential causes of action identified in the Examiner's Report and to allocate the \$2.1 billion settlement fund to those settled claims. Importantly, as noted by the Examiner, given the expansive evidence and data reviewed and the nature of sometimes unsettled legal issues raised by many of the claims, the Examiner's assessment of the likelihood of success of each cause of action is inherently imprecise. The Examiner's Report contains nuanced conclusions and therefore, the Examiner cautions against applying probabilities or mathematical models to the results contained in his report.

I have heeded this caution and have applied a non-formulaic, nuanced approach to determining the reasonable settlement value of each claim and the allocation of the \$2.1 billion settlement fund provided by AFI among the various settled claims. Although under the absolute priority rule, I could have allocated the settlement first to secured claims such as the JSNs, and second to unsecured claims, instead I made allocations pro rata based on the reasonable value of each of the claims. I did so based on my 25 years of experience as a practitioner, my 14 years of experience as a U.S. Bankruptcy Judge for the District of New Jersey, as well as my experience as a mediator. When appropriate, I have provided more than one method in arriving at my opinion regarding the reasonable settlement amount of a claim. For example, I applied a discounting method focused on the likely outcome or merits of a particular issue and my perception of the motivation of the parties to arrive at a reasonable settlement value of the cause of action. I also applied a likely settlement negotiation scenario to arrive at a settlement value from a second approach. If the settlement value of a particular claim was less than or equal to 1% of the gross value of the \$2.1 billion dollar settlement fund provided by AFI (approximately \$21 million), I deemed that claim to be not material for purposes of allocating the \$2.1 billion settlement fund to the claims.

1. Legal Conclusions

I reviewed each of the legal conclusions of the Examiner and I generally reviewed the statutory and case law cited by the Examiner in support of each potential claim discussed in the Examiner's Report. Unless specifically noted, I agree with and rely on the legal conclusions reached by the Examiner as set forth in his Examiner's Report in rendering my Opinion.

2. Citations to Examiner's Report

For each claim, I have listed the references to relevant information in the Examiner's Report. However, for ease of reading, for the most part I have not pin cited the reference to the Examiner's Report. Unless specifically noted, I agree with the Examiner and rely on the factual conclusions reached by the Examiner as set forth in his Examiner's Report in rendering my Opinion. In addition,

the capitalized terms not defined in this Opinion shall have the meaning as defined in the Examiner's Report and the Appendix thereto.

3. Summary of Conclusions

After reviewing each of the causes of action identified in the Examiner's Report, in my opinion the reasonable settlement value of the Estate Causes of Action is \$1,920.0 million and the reasonable settlement value of the Third Party Claims is \$480 million for a total reasonable settlement value of all claims and causes of action of \$2,400.0 million. In my opinion the settlement fund of \$2.1 billion to be paid by AFI should be allocated to the reasonable settlement value of each claim *pro rata*.

<u>Claims</u>	<u>Potential Damages</u> (in millions)	<u>Reasonable Settlement Amount</u> (in millions) ¹	<u>Percentage of Potential Damages</u>	<u>Allocation from \$2.1 billion AFI Settlement Fund</u> (in millions)	<u>Percentage of Potential Damages</u>
<u>ESTATE CAUSES OF ACTION</u>					
Breach of Contract for Misallocation of Net Revenues on Loans brokered by GMAC	\$520.5	\$268.2	51.5%	\$234.6	45.1%
Breach of Contract for Failure To Pay Value of Purchased MSRs	\$1,725.0	\$387.2	22.4%	\$338.8	19.6%
Preferential Transfer relating to DOJ/AG Consent Order	\$109.6	\$60.0	54.7%	\$52.5	47.9%
Preferential Transfer relating to 2012 Letter Agreement and A&R Servicing Agreement	\$48.4	\$32.0	66.1%	\$28.0	57.9%

¹ Zeros are omitted for any settlement value that does not meet my threshold for materiality (\$21 million).

<u>Claims</u>	<u>Potential Damages</u> (in millions)	<u>Reasonable Settlement Amount</u> (in millions)¹	<u>Percentage of Potential Damages</u>	<u>Allocation from \$2.1 billion AFI Settlement Fund</u> (in millions)	<u>Percentage of Potential Damages</u>
Breach of contract regarding the First 2009 Tax Allocation Agreement	\$1,770.0	\$713.7	40.3%	\$624.5	35.3%
Minnesota Insider Preference Claims	\$566.0	\$328.9	58.1%	\$287.8	50.8%
Fraud related to 2006 Bank Restructuring	\$569.0	\$130.0	22.8%	\$113.8	20.0%
<i>TOTAL</i>		\$1,920.0		\$1,680.0	
<u>THIRD PARTY CAUSES OF ACTION</u>					
Third Party Claims against AFI					
a. RMBS Claims, including veil-piercing, control person liability, aiding and abetting fraud	\$20,000.0 ²	\$480.0	2.4%	\$420.0	2.1%
<i>GRAND TOTAL</i>		\$2,400.0		\$2,100.0	

² The Examiner did not quantify the potential damages for the Third-Party RMBS Claims against AFI.

**E. DETAILED REVIEW OF EXPERT OPINION REGARDING SETTLEMENT
VALUES OF POTENTIAL ESTATE CLAIMS**

In reaching an opinion concerning the likely settlement value of each of the Estate Causes of Action, I have considered a number of factors, including the factors relevant in determining whether the settlement is fair and equitable, the *Iridium* factors.³

Bankruptcy Rule 9019 provides that after notice and a hearing, “the court may approve a compromise or settlement.” In determining whether to approve a settlement, the court must determine whether the settlement is “fair, equitable and in the best interests of the estate.”⁴ To determine whether a proposed compromise is fair and equitable, the court must review all facts necessary to (i) determine the probabilities of success should the claim be litigated, (ii) estimate the complexity, expenses and duration of litigating the claims, (iii) evaluate the possible difficulties of collecting on a judgment and all other factors relevant to an assessment of the settlement.⁵

In *Iridium*, the Second Circuit enumerated seven factors that should be evaluated in determining whether a settlement is fair and equitable and should be approved under Bankruptcy Rule 9019. Those factors are:

- The balance between the litigation's possibility of success and the settlement's future benefits;
- The likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment;
- The paramount interests of the creditors, including each affected class's relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement;
- Whether other parties in interest support the settlement;
- The competency and experience of counsel supporting, and the experience and knowledge of the bankruptcy court judge reviewing, the settlement;
- The nature and breadth of releases to be obtained by officers and directors; and
- The extent to which the settlement is the product of arm's length bargaining.⁶

I have considered each of these factors, as relevant, in determining the likely settlement amount of each claim identified by the Examiner. For all of the Estate Causes of action I assumed that collection is not a significant factor.

³ *Motorola, Inc. v. Official Comm. Of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 462 (2d Cir. 2007)(citing *In re WorldCom, Inc.*, 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006); *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992).

⁴ *TMT Trailer Ferry*, 390 U.S. at 424-25.

⁵ *Id.*

⁶ *Iridium*, 478 F.3d at 462.

In arriving at the likely settlement amount for each of the potential claims identified by the Examiner, I have also considered the likely motivation of the particular litigants regarding the decision to settle the claims. Estate causes of action are likely to be pursued by a fiduciary such as a liquidating trustee or a committee. Fiduciary plaintiffs are typically motivated to reach an early resolution of disputes in order to reduce litigation costs and expedite distributions to creditors.

In assessing the likely settlement value of a potential claim identified by the Examiner, I have also considered the state of the law post-*Stern v. Marshall*.⁷ There are many procedural hurdles that attend bankruptcy litigation, including the constitutional authority of a bankruptcy judge to render a final judgment in a state law contract dispute or a tort claim, federal statutory claims such as securities law claims, or an avoidance action under the Bankruptcy Code or state law such as a preference or a fraudulent transfer action. In addition, litigation of estate claims raises procedural issues of withdrawal of the reference and demands for a jury trial (the “Procedural Factors”). The Supreme Court has granted certiorari in the *Bellingham* case,⁸ a Ninth Circuit case holding that fraudulent conveyance claims against non-creditors cannot be adjudicated by non-Article III judges. Thus, the Supreme Court may finally resolve these issues and offer both lower Article III courts and bankruptcy courts further guidance on the scope of a bankruptcy judge’s authority.

Although *Stern v. Marshall* initially resulted in litigants requesting the withdrawal of the reference resulting in delay of the proceedings, the District Court for the Southern District of New York attempted to ameliorate these procedural roadblocks by entry of its Amended Standing Order of Reference on January 31, 2012. The Standing Order provides that if a bankruptcy judge or district judge determines that the entry of a final order or judgment by the bankruptcy judge would not be consistent with Article III of the United States Constitution in a particular proceeding referred under the standing order and determined to be a core matter, the bankruptcy judge shall hear the proceeding and submit proposed findings of fact and conclusions of law to the district court unless otherwise ordered by the district court. This procedure is the same procedure currently prescribed by 28 U.S.C. § 157(c) relating to non-core matters. Nevertheless, parties must still evaluate which is their preferred forum and take steps they deem in their best interest.

Also, the parties will have the right to a jury trial in many of the estate claims identified by the Examiner such as contract disputes and securities law claims. It is anticipated that some parties may request a jury trial. Many of the procedural issues pertaining to bankruptcy litigation will be present in the estate claims identified by the Examiner. They add complexity, risk, uncertainty, delay and expense to the litigation which must be factored into the evaluation of a reasonable settlement amount.

⁷ 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011).

⁸ *Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.)*, 702 F. 3d 553 (9th Cir. 2012).

1. Claims of GMAC Mortgage and ResCap Relating To The MMLPSA, Pipeline Swap, MSR Swap, and Broker Agreement

a. Misallocation of Net Revenues on Loans Brokered by GMAC Mortgage

Examiner's Report References:

Section I.E pages I-8 to I-9

Section V.B.6 pages V-123 to V-154

Section VII.L pages VII.L-64 to VII.L-66

Description:

The implementation of the agreements between GMAC Mortgage and Ally Bank concerning the allocation of revenues on loans GMAC Mortgage brokered to Ally Bank between January 1, 2009 and April 30, 2012.

Background:

In 2008, ResCap was facing severe liquidity issues, while Ally Bank maintained excess liquidity and was searching for ways to grow its business. As a solution to those issues, in March 2008, ResCap and Ally Bank personnel began work on the "Brokering Consumer Loans to Bank" project. Prior to the project, the Bank's ability to purchase loans originated by GMAC Mortgage were subject to the "250.250 exception" limit which capped it at 50% of GMAC Mortgage's preceding twelve-month rolling production. Loans brokered to Ally Bank by GMAC Mortgage and then originated by Ally Bank would not be subject to this limit. Under the parties' then-existing agreement, Ally Bank recognized as revenue only the "net interest carry" for the period the loan was on Ally Bank's books. GMAC Mortgage realized the benefit of any points or other origination fees charged.

Contemporaneous e-mails among Albert Celini (an Ally Bank official and its "Sponsor" of the Brokering Consumer Loans to Bank Project), his subordinate Debra Scott (Bank Project Leader), and Matthew Whitehead (a ResCap representative) reflect a mutual understanding that the parties intended to maintain the same economics that had been in place for loans sold under the 250.250 program. The parties' agreement is further reflected in a slide presentation dated November 19, 2008, entitled "Brokering Consumer Loans 2 Bank Project (BCL2B), Legal Entity Revenue, Expense, and Broker Fee Proposal" (the "BCL2B Presentation"). The BCL2B Presentation states, among other things, that Ally Bank would "recognize" origination income, overage/shortage or pricing subsidies, broker fees, and underwriting expense, these items would be deferred and capitalized, and, upon the sale of the loan, their resulting economic effects would be transferred to GMAC Mortgage through the Master Mortgage Loan Purchase and Sale Agreement ("MMLPSA") and Pipeline Swap. Ally Bank would retain net interest carry, and would retain the mortgage servicing rights ("MSRs") upon sale of the loan. From an accounting standpoint, the deferred loan

origination fees and expenses, including broker fees, was governed by Statement of Financial Accounting Standards No. 91 ("FAS 91").

To achieve this goal on the loans brokered to Ally Bank by GMAC Mortgage, origination fees (*e.g.*, discount points) would be paid by the borrower to Ally Bank, and Ally Bank would then defer and capitalize that income. This would reduce the cost basis of the loan, which, under the Pipeline Swap and MMLPSA, would in turn reduce the price charged to GMAC Mortgage when it purchased the loan from GMAC Bank. Similarly, any brokerage fee paid by GMAC Bank to GMAC Mortgage would also be deferred and capitalized, which, under the Pipeline Swap and MMLPSA, would increase GMAC Mortgage's purchase price of the loan. In this way, Ally Bank was able to recoup the brokerage fees.

On November 20, 2008, GMAC Mortgage and its subsidiary, Ditech, LLC, as brokers and GMAC Bank, predecessor to Ally Bank, entered into the Broker Agreement, which is the only new written agreement into which the parties entered in connection with BCL2B. The Broker Agreement does not specify the fee that is to be paid to GMAC Mortgage for acting as a broker. However, Celini stated that any change in the pre-Broker Agreement economics (or any change in the accounting that required such a change) would have required "a change in affiliate agreements" then in place.

GMAC Bank and GMAC Mortgage initially allocated revenue and expense as agreed when they implemented the Broker Agreement. That is, from January 1, 2009 to July 31, 2009 (when Ally Bank elected an accounting change discussed below), Ally Bank realized only the net interest carry on the loans, while also retaining the MSRs on the increased volume of loans passing through Ally Bank by virtue of avoiding the 250.250 limits. GMAC Mortgage, through the impact of FAS 91 deferrals, continued to reap the benefit of points and other origination-related revenues, as well as the impact of capitalized expenses. The accounting for sample loans from this period produced by the Debtors confirms the above-described treatment, and matched the sample loan-level accounting provided by the BCL2B Presentation. For the period January 1, 2009 through July 31, 2009, the net benefit to GMAC Mortgage from adjusting the purchase price of the brokered loans by the FAS 91 deferrals was \$47.2 million. In other words, GMAC Mortgage received net revenue of \$47.2 million on the loans that it brokered to GMAC Bank under the Broker Agreement during this period.

Effective August 1, 2009, Ally Bank implemented an accounting change to convert to fair-value accounting. As a consequence of this accounting change, beginning August 1, 2009, rather than realizing the benefit of points and the gain on sale as the parties had agreed (and as it had received under the 250.250 program and for third-party brokered loans), GMAC Mortgage instead received the cost-based, below market broker fee (which, since it was no longer capitalized, GMAC Mortgage did not have to repay to Ally Bank when it purchased the loan). However, GMAC Mortgage had agreed to such a fee with the understanding that, whatever the fee charged, the fee would be a "wash" because of the FAS 91 deferrals, and with the expectation that it would continue to receive the benefit of the FAS 91 deferrals. The Examiner illustrated the changed allocation of revenues resulting from Ally Bank's August 1, 2009 change to fair-value accounting as follows:

EXHIBIT V.B.6.d

**Accounting for Loans Brokered by GMAC Mortgage to the Bank
Pre and Post Fair Value Election**

	Pre-Fair Value Election	Post-Fair Value Election
Points collected	GMACM	BANK
Lender paid closing costs	GMACM	BANK
"Day one" gain	GMACM	BANK
Net interest carry	BANK	BANK
Gain on sale to third party	GMACM	GMACM
Broker fee (at cost)	N/A	GMACM

Source: Broker to Bank Contract Accounting Review, at 2 [EXAM12253506] (attached to e-mail from J. Cortese to C. Dondzila, J. Young, J. Whitlinger, and J. Andrews (Feb. 27, 2012) [EXAM12253505].

There appears to be no evidence that this change in the underlying economics was understood and agreed to by GMAC Mortgage, or that the parties even recognized at the time that the fair-value election would have the effect described above, which was to allow Ally Bank to keep a significant portion of the gain on sale while still assuming no representation and warranty exposure or hedge exposure, and while paying a below-market broker fee in the bargain. Instead, the matter appears to have come to light in December 2011 when Adam Glassner, Ally Bank Senior Managing Director, noticed "the revenue recognition by legal entity was more in the bank and less in ResCap," which he thought erroneous in light of his understanding that GMAC Mortgage was supposed to receive the entire gain on sale.

Upon this discovery, Glassner reached out to James Whitlinger, then Chief Financial Officer, Mortgage Operations, ResCap, and James Young, Chief Financial Executive, Ally Bank. Ally Bank and AFI began a review into the appropriate allocation of revenue under the Broker Agreement, MMLPSA, and Pipeline Swap. Ally Bank personnel initially concluded that the intent of the Brokering Consumer Loans to Bank Project was that Ally Bank was not to receive gain on sale revenue, yet Ally Bank was currently recording a piece of gain on sale.

Despite the initial reactions which favored GMAC Mortgage retaining the entire gain on sale, KPMG (retained by AFI General Counsel William Solomon on AFI's behalf) and an Ally Bank investigation both concluded that the accounting methods employed by Ally Bank after August 1, 2009 were consistent with the agreements between the parties. However, KPMG's report does not acknowledge the BCL2B Presentation's explicit references to FAS 91 deferrals of fees and expenses and does not address the sample accounting provided with the BCL2B Presentation or the fact that it aligns with the accounting treatment implemented from January 1, 2009 to July 1, 2009 by those who had just negotiated the broker arrangement, but not with the accounting treatment implemented after Ally Bank's fair-value election.

Joe Cortese (for Ally Bank) and Cathy Dondzila (for ResCap) also prepared virtually identical, internal accounting memos concluding that the revenue recognition for January 1, 2009 to July 31, 2009, "was done in error." Interestingly, the memos state that there were "conflicting

corporate evidential documents” and recognize that there was some support in the documents that Ally Bank was not to receive any gain on sale revenue. Importantly, the accounting method employed during January 1, 2009 through July 31, 2009 was in accordance with GAAP, and neither memo claimed otherwise.

Subsequently, in March 2012 and at the insistence of Ally Bank, GMAC Mortgage paid Ally Bank \$51.4 million, representing the \$47.2 million received for the January 1, 2009 to July 31, 2009 time period, plus interest. From the August 1, 2009, fair value election through April 2012, Ally Bank retained additional revenues that would have been allocated to GMAC Mortgage under the revenue allocation implemented from January 1, 2009 through July 31, 2009, illustrated by the Examiner as follows:

EXHIBIT V.B.6.g

Amounts Retained by Ally Bank But Owed to GMAC Mortgage Under the Revenue Allocation Implemented Between January 1, 2009, and July 31, 2009

August 2009 – April 2012

(\$ in Thousands)

	2009	2010	2011	YTD April 2012	Total
Loan discount (net, borrower and lender paid)	\$ 144,503	\$ 40,461	\$ 10,540	\$ 513	\$ 196,017
Loan discount (Capital Markets Required Price)	209	113,920	158,852	137,775	410,756
Non-broker activity	853	178	635	-	1,667
Loan discount income	145,566	154,559	170,028	138,288	608,440
Loan processing fee income	44,268	47,419	46,709	12,267	150,663
Pricing adjustments	(7,551)	(9,064)	(9,831)	(3,816)	(30,262)
Overage/shortage	17	-	-	-	17
Origination fee	16,801	(666)	(13)	(17)	16,104
Broker fee expense	(78,089)	(64,543)	(55,622)	(30,416)	(228,670)
Total FAS 91 deferral at origination for the period January 1, 2009 to YTD April 2012	\$ 121,010	\$ 127,704	\$ 151,270	\$ 116,306	\$ 516,291
FAS 91 deferral at origination for the period January 1, 2009 to July 31, 2009	(47,180)	-	-	-	(47,180)
Total amount retained by Ally Bank but owed to GMAC Mortgage under the revenue allocation implemented from Jan. 1, 2009 – July 31, 2009 ⁽¹⁾	\$ 73,830	\$ 127,704	\$ 151,270	\$ 116,306	\$ 469,111

⁽¹⁾ Under this allocation, Ally Bank receives interest carry only and GMAC Mortgage receives the effect of income and expense items that would have been deferred under FAS 91 before the fair value election consistent with the original accounting allocation for the period January 1, 2009 through July 31, 2009.

Source: Exam Requested Loan Origination Revenue [ALLY_0402447]; Broker to Bank Contract Accounting Review, at 2 [EXAM12253506] (attached to e-mail from J. Cortese to C. Dondzila, J. Young, J. Whitlinger, and J. Andrews (Feb. 27, 2012) [EXAM12253505]).

As illustrated above, from August 2009 to April 2012, Ally Bank retained a further \$469.1 million that would have been paid to GMAC Mortgage had the revenue allocation originally agreed to remain in place. This amount is in addition to the \$51.4 million paid by GMAC Mortgage to Ally Bank in March 2012 for amounts received by GMAC Mortgage for the period January 1, 2009 through July 31, 2009.

Examiner's Analysis and Conclusions:

1. The Examiner concluded that it is likely that Ally Bank's August 1, 2009 conversion to fair-value accounting resulted in a breach by Ally Bank of the parties' agreement, documented in the MMLPSA and Pipeline Swap and in the parties' communications and documentation concerning the Brokering Consumer Loans to Bank Project and in their subsequent conduct from January 1, 2009 to July 31, 2009.

2. The Examiner concluded that it is likely that GMAC Mortgage would prevail on a contractual claim that the allocation of revenues from January 1, 2009 to July 31, 2009 was proper, and that it is therefore entitled to payment of the revenues misallocated to Ally Bank from and after August 1, 2009.

3. The Examiner concluded that GMAC Mortgage's contract claim under the MMLPSA, Pipeline Swap, and the parties' agreement about the combined effect of those contracts is estimated at \$520.5 million, consisting of: (i) \$51.4 million, representing return of GMAC Mortgage's March 2012 payment to Ally Bank for amounts received by GMAC Mortgage between January 1, 2009 and July 31, 2009; and (ii) \$469.1 million in additional revenues (net of expenses including the below-market broker fee) that GMAC Mortgage would have received had the parties' agreed-upon revenue allocation been respected from August 1, 2009 to April 30, 2012.

4. The Examiner concluded that although it is unclear which interest rate would apply to these circumstances, the pertinent rate (possibly 9% per annum under New York law or 5% above the Federal Reserve discount rate under Delaware law) would be applied to the \$51.4 million component repaid to Ally Bank from the repayment date, and to the \$469.1 million in revenues retained by Ally Bank for the period August 1, 2009 through April 30, 2012, from the date on which each of the constituent portions of those revenues was due to GMAC Mortgage (*i.e.*, the sale date of the pertinent loan).

Review of Examiner's Analysis and Conclusions:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

This claim would likely be pursued by a bankruptcy fiduciary such as a trustee or committee. Fiduciary plaintiffs are typically motivated to reach an early resolution of disputes in order to expedite distributions to creditors. All of the procedural hurdles that attend bankruptcy litigation would be present in this case including (i) the constitutional authority of a bankruptcy court to render a final judgment in a state law contract dispute, (ii) withdrawal of the reference, and (iii) demand for a jury trial. In addition, all litigation carries risk uncertainty and expense. As a result, it is highly likely that any settlement would reflect a discount of 20% from the face value of the claim.

The Examiner concludes that GMAC Mortgage's claim would be predicated on the MMPLSA (governed by Delaware law), and the Pipeline Swap (governed by New York law), and

the parties' agreements reflected in the documentation of the BCL2B. The possible application of the law of two different states would increase the complexity of this litigation and likely allow either side to argue for the application of the law most beneficial to it on a particular issue. In addition, the MMPLSA contains a choice of venue provision calling for resolution of related disputes in the United States District Court for the District of Delaware, which would allow for even more preliminary jurisdictional and venue related disputes than ordinarily present in bankruptcy litigation.

Although the Examiner concludes that GMAC Mortgage would likely prevail on a claim for breach of the parties' agreement, he concedes it is possible that the contemplated allocation of revenues was not mandated by the terms of the 2008 MMLPSA and Pipeline Swap. If so, GMAC Mortgage would need to prove that the contemporaneous Brokering Consumer Loans to Bank Project documentation and the parties' ensuing implementation of the arrangement constituted a written modification of those agreements to provide for the contemplated revenue allocation. Because the 2008 MMLPSA requires that any modification include a signed writing, GMAC Mortgage would need to rely upon the case law that permits modifications to agreements even if such modifications do not comply with the terms set forth for modifications in the original agreement. Although permissible, pursuing a claim based upon an alleged modification to an agreement that does not comply with that agreement's requirements for modifications is substantially more difficult than pursuing a claim based upon a straightforward breach of the agreement's terms. For example, in *Continental Insurance Company v. Rutledge & Company, Inc.*,⁹ which the Examiner cites for the general proposition that contract provisions deeming oral modifications unenforceable can be waived orally or by a course of conduct just like any other contractual provision, the court refused to enforce an alleged non-written contractual modification based on the parties' prior course of dealing because the parties' prior course of conduct demonstrated that they did, in fact, amend the agreement in writing.¹⁰ Here, the parties similarly amended and restated the MMLPSA, in writing, on at least June 1, 2007 and July 1, 2008. Thus, even though the Examiner concludes that GMAC Mortgage would likely prevail on such a claim, the claim is not without risk. Nonetheless, the parties' conduct before and after the implementation of the BCL2B and the limited scope of the KPMG Report (which does not cover the accounting for the transaction prior to the fair value election), would likely overcome AFI's arguments in this regard. I estimate that the existence of disputed facts, associated risk, and likely need for substantial discovery to develop and resolve those disputed facts, would further reduce the settlement value of the claim by 30%.

Even though AFI would likely dispute the claim, the magnitude of the claims (at \$520.5 million) would likely be a strong motivating factor for AFI to settle. In addition, the likelihood of success identified by the Examiner would also incline AFI toward a substantial settlement. Legal fees and expenses in prosecuting and defending the claim would run into the tens of millions of

⁹ 750 A.2d 1219 (Del. Ch. 2000).

¹⁰ To the extent the Pipeline Swap, which is governed by New York law, needs to be amended or modified, New York law similarly permits oral modifications to written contracts that purport to prohibit oral modifications, albeit under a slightly different standard. See *O'Reilly v. NYNEX Corp.*, 693 N.Y.S.2d 13 (N.Y. App. Div. 1999); *Rose v. Spa Realty Assoc.*, 366 N.E. 2d 1279 (N.Y. 1977)); *Honeywell Int'l. Inc. v. Air Prods & Chems, Inc.*, 872 A.2d 944 (Del. 2005) (applying New York law).

dollars, but pale in comparison to the magnitude of the claims. However, the MMPLSA contains a fee-shifting provision in § 8.13, which adds additional litigation risk.

The Examiner noted that there is “ample fodder” for an argument that the initial reaction of those reviewing the revenue allocation issue in 2011 was squelched, and that the resulting reports in 2012 labeling the initial allocation in GMAC Mortgage’s favor from January 1, 2009 to July 31, 2009 an accounting error, was the product of a desire to avoid restating Ally Bank’s financials and the regulatory scrutiny that would have ensued, rather than a fair and objective attempt to resolve the matter. I agree with that conclusion, and if developed through discovery, this argument would provide GMAC Mortgage with a compelling story of cover-up and wrongdoing that could significantly impact the fact finder’s decision and further incentivize AFI to settle.¹¹

As the Examiner notes, under either New York or Delaware law, GMAC Mortgage would be entitled to prejudgment interest if successful on its contractual claim for misallocation of net revenues on loans it brokered to Ally Bank. The potentially applicable interest rates are not insignificant (9% under New York Law, and 5% above the Federal Reserve discount rate under Delaware law), and would amount to tens of millions of dollars per year when applied to the total \$520.5 million claim. Interest would run on the \$51.4 million payment from GMAC Mortgage from the date of that payment in March 2012. Interest on the \$469.1 component of the claim for amounts that GMAC Mortgage should have received between August 1, 2009 and April 30, 2012 would ordinarily run from the date on which each of the constituent portions of those revenues was due to GMAC Mortgage. Given the significant amounts involved, the parties would likely submit expert calculations of the interest due on the \$469.1 million component of the claim, but it is also possible that a court, applying New York law, would select a single reasonable intermediate date or, if it could not determine a single reasonable intermediate date, to fix interest from the date of commencement of the action.¹² However, cases rarely settle for full value of the claim and less frequently settle for full value of the claim, plus interest. I estimate that the likelihood of interest at a rate of between 5.5% and 9% per annum for a period of, as to some portions of the claim, up to four years, adds 15% to the settlement value of the claim.

Under these circumstances, I would expect plaintiff’s initial settlement demand to be at \$540 million, approximately 90% of the gross amount of the claim (of approximately \$600 million, including interest and attorneys’ fees), and defendant’s initial offer at \$90 million, approximately 15% of the claim. Taking into account the discounts and enhancements identified above, as well as the relative bargaining power of the parties and the back and forth to be expected in the negotiating process, I estimate the fair and likely settlement of the misallocation of net revenues on loans brokered by GMAC Mortgage claim at \$268.2 million.

¹¹ The Examiner also notes that it may be possible to fashion a breach of fiduciary duty claim against ResCap officials who apparently succumbed to AFI’s and Ally Bank’s desires, but that such a claim faces a variety of substantial obstacles and would appear to be wholly redundant of the recoveries the Examiner concludes are already available to Debtors under contract law. Accordingly, the analysis of the claim for Misallocation of Net Revenues on Loans Brokered by GMAC Mortgage does not include any value for such a claim of breach of fiduciary duty.

¹² See, e.g., *Gelco Builders & Burjay Constr. Corp. v. Simpson Factors Corp.*, 60 Misc. 2d 492 (N.Y. Sup. Ct. 1969).

Potential Damages: \$520.5 million

Reduced by:

20% inherent risk= \$416.4 million

30% risk for possible pursuit of claim under
modification theory= \$291.5 million

20% risk based on disputed facts & GMAC Mortgage
approval of allocation to be challenged= \$233.2 million

Increased By:

15% for interest= \$268.2 million

***b. Failure to Pay Value of Purchased MSRs and Correspondent Loan
MSRs to GMAC Mortgage under the MSR Swap***

Examiner's Report References:

Section I.E.b pages I-10

Section III.F.3.c pages III-93

Section V.B.9 pages V-157 to V-184

Section V.B.12 pages V-199 to V-209

Section VII.L.2 pages VII.L-29

Section VII.L-66 to VII.L-73

Description:

The implementation, between September 2007 and April 2012, of the agreement between GMAC Mortgage and the federal savings bank now known as National Motors Bank FSB ("Old GMAC Bank")/Ally Bank concerning the application of the MSR Swap,¹³ the 2010 Net Funding Schedule,¹⁴ and the April 2011 MSR Swap Confirmation¹⁵ to mortgage servicing rights (MSRs) (i)

¹³ The "MSR Swap" means the ISDA Master Agreement between GMAC Mortgage and GMAC Bank, dated June 12, 2007, including the FMV Schedule thereto, dated August 31, 2007 and the Net Funding Schedule thereto, dated August 31, 2007.

¹⁴ The "2010 Net Funding Schedule" means the Schedule to the ISDA Master Agreement (Net Funding) between GMAC Mortgage and GMAC Bank, dated July 1, 2010.

arising from loans Ally Bank purchased from correspondents and (ii) to MSR's that Ally Bank purchased from third parties.

Background:

When ResCap was formed, its subsidiaries GMAC Mortgage and RFC owned substantial portfolios of MSR's, which are contractual rights to service loans and receive the related fees and certain ancillary income. Since at least 2005, ResCap and Ally Bank had considered entering into an arrangement whereby Ally Bank would hold MSR's in order to, among other things, realize savings associated with no longer financing MSR's through regular lending channels. The Examiner observed that, "[f]rom early on, the personnel involved contemplated that the movement of the MSR's to Ally Bank would be accompanied by a 'total return swap,' transferring the MSR's' economics (positive and negative) back to ResCap in exchange for providing Ally Bank a fixed rate of return." Examiner's Report, at V-159.

The FDIC eventually approved Ally Bank's retention of MSR's on loans sold by Ally Bank to GMAC Mortgage, but repeatedly refused to approve Ally Bank's acquisition of existing MSR's from ResCap entities. In addition, the regulators opposed Ally Bank's retention of the MSR's without the protection of the MSR Swap, which went into effect on August 31, 2007. The original MSR Swap is documented on an ISDA Master Agreement and two Schedules – the FMV Schedule and the Net Funding Schedule, each dated August 31, 2007.

First, under the FMV Schedule, changes in the "FMV Change," defined as "FAS 156 mark to market for the Valuation Period as recorded by [Ally Bank] against the mortgage servicing right asset," were measured each business day. If the FMV Change was positive, then Ally Bank owed GMAC Mortgage the amount of the increase. Conversely, if the FMV Change was negative, GMAC Mortgage owed Ally Bank the amount of the decrease.¹⁶

Simultaneously, under the Net Funding Schedule, Ally Bank was required to pay GMAC Mortgage all the servicing income it received on its portfolio of MSR's, net of expenses incurred, which included the fees paid to GMAC Mortgage under the Original Servicing Agreement for Bank-owned MSR's. In return, the Net Funding Schedule required GMAC Mortgage to pay Ally Bank a "Funding Fee," which was a LIBOR-based fixed rate payment calculated on the value of the MSR's and servicing revenues. In essence, the combined effect was to transfer the MSR's' economics (positive and negative) to GMAC Mortgage under the FMV Schedule in exchange for a LIBOR-based fixed rate payment to Ally Bank under the Net Funding Schedule.

On its face, the FMV Schedule required that all increases in the value of Ally Bank's mortgage servicing right assets flow to GMAC Mortgage, without distinguishing among MSR's arising from Bank-originated loans, purchased MSR's, and MSR's arising from purchased loans. In practice, however, Ally Bank paid to GMAC Mortgage only for increases related to Bank-originated

¹⁵ The "April 2011 MSR Swap Confirmation" means the Confirmation of the Total Return Swap Relating to Mortgage Servicing Rights of Ally Bank, dated April 1, 2011.

¹⁶ 2007 FMV Schedule, parts 6(a)(vii), 6(d) [RC00027822].

loans; it did not include increases related to MSR's arising from correspondent loans Ally Bank had purchased or to MSR's purchased separately. Instead, for correspondent loans, Ally Bank paid the capitalized value of excess servicing rights to GMAC Mortgage, but not the capitalized value of the MSR's themselves. The capitalization and purchase of new MSR's was always handled in this fashion from the August 2007 inception of the MSR Swap, despite the plain language of the FMV Schedule. In contrast, when GMAC Mortgage paid the LIBOR-based Funding Fee, the value of the newly recognized MSR's (including both MSR's on loans Ally Bank sold to GMAC Mortgage and MSR's that Ally Bank periodically purchased from third parties) was included in the amounts used to calculate the Funding Fee.

Although, individuals who had subsequent involvement with the MSR Swap, including Joe Cortese (for Ally Bank) and James Young (for ResCap), offered conflicting explanations for the parties' differing treatment of MSR capitalization under the MSR Swap, the Examiner concluded that none of these explanations perfectly explains the parties' actions.

In April 2011, the parties entered into the MSR Swap Confirmation, which covered the previously separately-documented FMV Swap and Net Funding Swap. After reviewing these changes, the Examiner concluded that the April 2011 MSR Swap Confirmation is, if anything, even clearer than the original MSR Swap and FMV Schedule that it applies not just to MSR's on bank-originated loans, but to all MSR's, including purchased MSR's and correspondent-loan MSR's.

ResCap's records indicate that Ally Bank paid GMAC Mortgage a total of \$699.7 million over the duration of the MSR Swap from September 2007 through termination in April 2012. The Examiner illustrated the key financial elements of the MSR Swap, on an annual basis, as follows:

EXHIBIT V.B.12.b(1)—5

MSR Swap – Key Financial Elements

September 2007 – April 2012

(\$ in Millions)

	2007	2008	2009	2010	2011	2012	Total
FMV change - interest rate ⁽¹⁾	\$ (0.0)	\$ (296.4)	\$ 257.8	\$ 171.7	\$ (430.0)	\$ (0.2)	\$ (297.3)
FMV change - amortization ⁽¹⁾	-	-	(117.9)	(318.2)	(364.1)	(127.2)	(927.4)
Funding fees (LIBOR +)	(0.4)	(14.0)	(9.1)	(23.5)	(59.6)	(16.1)	(122.6)
Gain on new cap - MSR	8.6	53.4	77.6	136.1	61.6	27.0	364.2
Gain on new cap - excess servicing	14.6	219.5	95.9	209.9	69.4	10.9	620.2
Net servicing fees	3.9	102.2	177.3	294.0	362.8	122.2	1,062.5
Total cash settlement paid to GMAC Mortgage	\$ 26.6	\$ 64.7	\$ 481.6	\$ 469.9	\$ (360.0)	\$ 16.7	\$ 699.7

⁽¹⁾ For 2007 to 2008, economic amortization was not calculated separately from changes to interest rate assumptions.

Source: ResCap - MSR Cash Summary [EXAM00231039]; OMSR Values [EXAM00339036].

The value of Ally Bank's MSR asset attributable to correspondent loans and purchased MSR's, which were not paid to GMAC Mortgage under the MSR Swap despite the plain language of the MSR Swap and the MSR Swap Confirmation, and thus the value of GMAC Mortgage's potential contract claim under those agreements, totals \$1.725 billion, illustrated by the Examiner as follows:

EXHIBIT V.B.10.b(2)

Additions to the Value of Ally Bank's MSR Asset Attributable to Correspondent Loan MSRs and Purchased MSRs

(\$ in Thousands)

	Sep. 2007 - Dec. 2008 ⁽¹⁾	Jan. 2009 - Mar. 2011	Apr. 2011 - Mar. 2012	Total
New capitalizations - purchased MSRs	\$ 421,860	\$ 256,239	\$ 28,986	\$ 707,085
New capitalizations - originated and correspondent loan MSRs	19,035	923,463	404,805	1,347,303
Sub-total new capitalization	440,895	1,179,702	433,790	2,054,387
New capitalizations - excess servicing (originated and correspondent)	271,602	325,647	62,153	659,402
Gain paid to GMAC Mortgage on new capitalizations	(310,934)	(578,364)	(99,152)	(988,450)
Additions attributable to correspondent loan MSRs and purchased MSRs	<u>\$ 401,563</u>	<u>\$ 926,985</u>	<u>\$ 396,791</u>	<u>\$ 1,725,340</u>

⁽¹⁾ Period before the 2009 Bank Transaction; monthly data not available for January 2009.

Source: MSR Swap Review, dated May 2012 [ALLY_0368244]; MSR Rollforward YTD 2009, dated Dec. 31, 2009 [EXAM00232590]; MSR Rollforward YTD 2010, dated Dec. 31, 2010 [EXAM00232591]; MSR Rollforward YTD 2011, dated Dec. 31, 2011 [EXAM00232592].

Examiner's Analysis and Conclusions:

1. The Examiner concluded that GMAC Mortgage has a potential claim that Ally Bank breached the MSR Swap's requirements by failing to pay to GMAC Mortgage the value of MSRs arising from loans Ally Bank purchased from correspondents or for purchased MSRs. The value of the MSRs, and thus the base value of GMAC Mortgage's potential claim, is approximately \$1.725 billion, including \$1.329 billion for the period before the April 2011 revision of the MSR Swap.

2. The Examiner concluded that James Young's attempt to reconcile the parties' practices with the terms of the MSR Swap (by asserting that increases in the value of Ally Bank's MSR portfolio due to newly recognizes MSRs were not required to be paid under the MSR Swap's FMV Schedule) is not likely to prevail.

3. The Examiner concluded that the parties consistently applied the MSR Swap in a way that is at odds with its language.

4. The Examiner concluded that the MSR Swap is governed by New York law.

5. The Examiner concluded that the doctrine of modification is not the proper rubric for analysis, at least before the April 2011 revisions, because there is no suggestion of an agreement after the MSR Swap was adopted to alter its terms. In addition, it does not appear that a modification in which GMAC Mortgage simply gave up the right to receive the newly recognized value of correspondent-loan MSRs and purchased MSRs would be supported by mutual consideration.

6. The Examiner concluded that Ally Bank may have substantial arguments that the MSR Swap would not have withstood regulatory scrutiny had it been applied to require payment of the value of purchased and correspondent-loan MSRs upon recognition.

7. The Examiner concluded that based on the available evidence and the exacting standard which governs the application of the doctrine of mistake, although a close question, a court more likely than not would reform the pre-April 2011 MSR Swap to require payment of the value of newly recognized MSRs only for those MSRs on which Ally Bank recognized a gain (*i.e.*, not for the \$1.329 billion attributable to purchased MSRs and purchased-loan MSRs).

8. The Examiner concluded that while a close question, a court more likely than not would reform the April 2011 MSR Swap Confirmation under the doctrine of mistake to require payment of the value of newly recognized MSRs only for those MSRs on which Ally Bank recognized a gain (*i.e.*, not for the \$396 million attributable to purchased MSRs and purchased-loan MSRs).

Review of Examiner's Analysis and Conclusion:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

This claim would likely be pursued by a bankruptcy fiduciary such as a trustee or committee. Fiduciary plaintiffs are typically motivated to reach an early resolution of disputes in order to save cost and expedite distributions to creditors. All of the procedural hurdles that attend bankruptcy litigation would be present in this case including (i) the constitutional authority of a bankruptcy court to render a final judgment in a state law contract dispute, (ii) withdrawal of the reference, and (iii) demand for a jury trial. In addition, all litigation carries risk uncertainty and expense. As a result, it is highly likely that any settlement would reflect a substantial discount (of 30%) from the face value of the claim.

GMAC Mortgage would base its claim on the straightforward terms of the MSR Swap, both before and after the April 2011 revisions. As the Examiner notes, by their terms, the relevant provisions turn on the value of the MSRs on Ally Bank's balance sheet, not on whether Ally Bank has recognized a gain on the asset in its income statement, and therefore facially apply to all of Ally Bank's MSR assets. Due to the relative ease with which GMAC Mortgage could meet its initial burden, it would likely initiate settlement discussions with an aggressive opening demand of 60% of the total claim amount, approximately \$1 billion.

At that point, the burden would be on AFI to prove its affirmative defenses under either of the theories primarily highlighted by the Examiner: mistake and modification. The Examiner concludes that AFI would likely succeed on the close question of a defense under the doctrine of mistake, despite the exacting standard which governs that doctrine. However, that same "exacting standard" would likely have a significant impact on the parties' settlement positions and the ultimate settlement value of this claim. Under New York law, AFI would need to establish mutual mistake

by clear and convincing evidence in order to overcome a “heavy presumption that a deliberately prepared and executed [agreement] manifest[s] the true intention[s] of the parties, . . . especially between counseled businessmen.”¹⁷ This would require AFI to show that both Ally Bank and GMAC Mortgage shared the same erroneous belief that the MSR Swap would not require Ally Bank to pay GMAC Mortgage the value of MSRs Ally Bank purchased separately or of MSRs arising from correspondent loans Ally Bank purchased.¹⁸

AFI may face evidentiary difficulties proving mutual mistake because, as the Examiner noted, the recollection of the participants to the negotiation of the MSR Swap, particularly with respect to the issue of the treatment of newly recognized MSRs, was limited. However, the Examiner concluded that the documentary evidence (other than the MSR Swap itself) supports application of the doctrine of mistake, as does the parties’ conduct and the disparate economic effect of transferring the newly recognized value of purchased MSRs and correspondent-loan MSRs to GMAC Mortgage. Indeed, the parties’ mutual and uniform performance under the MSR Swap, throughout its entire term, in a manner inconsistent with its terms but consistent with what AFI would argue was their true understanding, would weigh heavily in favor of AFI’s efforts to reform the MSR Swap under the doctrine of mistake. The regulatory scrutiny and concerns raised by Ally Bank’s regulators concerning the MSR Swap, as applied, also supports a claim of mutual mistake.¹⁹ Nonetheless, AFI would likely attach significant settlement value to this claim in recognition of the decidedly demanding burden it would need to overcome to reform the MSR Swap. In addition, both parties would likely recognize that AFI would most likely succeed, if at all, only after a trial, because mistake turns on the parties’ intent and “[q]uestions of intent . . . are usually inappropriate for disposition on summary judgment.”²⁰ Thus, AFI would need to factor the substantial costs and risk associated with trial into its settlement analysis. The magnitude of the claims (at \$1.725 billion), combined with the high likelihood that AFI would need to take the claim to trial to prevail, would likely be a strong motivating factor for AFI to settle. In view of the foregoing procedural and evidentiary hurdles, but accepting the Examiner’s conclusion that, although a close question, AFI would more likely than not succeed in reforming the MSR Swap based on the doctrine of mistake to apply to only Bank-originated MSRs, I estimate that the settlement value of this claim would be reduced by 55%.

The Examiner concludes that the doctrine of modification is inapplicable to the parties’ dealings with respect to this claim for several reasons, including, among others, the lack of any suggestion of an agreement after the MSR Swap was adopted to alter its terms and the likely lack of mutual consideration for a modification in which GMAC Mortgage simply gave up the right to

¹⁷ See *Healy v. Rich Products Corp.*, 981 F.2d 68, 73 (2d Cir. 1992) (citations and internal quotations omitted).

¹⁸ *Id.* (mutual mistake occurs when both parties “[s]hare the same erroneous belief and their actions do not in fact accomplish their mutual intent.”) (citations omitted); *K.I.D.E. Assocs., Ltd. v. Garage Estates Co.*, 720 N.Y.S.2d 114, 116 (N.Y. App. Div. 2001) (proponent of reformation must show not only that mistake exists, but exactly what was really agreed upon between the parties, particularly where negotiations were conducted by sophisticated, counseled parties).

¹⁹ As discussed by the Examiner and in more detail below, these same regulatory concerns may provide AFI with arguments in support of a defense that the MSR Swap would not have withstood regulatory scrutiny if applied to correspondent loan MSRs and purchased MSRs.

²⁰ See *Nat’l Union Fire Ins. Co. of Pittsburgh, Pa., v. Turtur*, 892 F.2d 199, 205 (2d Cir. 1989).

receive the newly recognized value of correspondent-loan MSR's and purchased MSR's.²¹ AFI would also likely face difficulties proving a modification of the MSR Swap where the parties subsequently confirmed the MSR Swap through the April 2011 MSR Swap Confirmation, but did not at that time revise the agreement in a manner consistent with the purported modification. AFI would likely nonetheless pursue a modification defense as an alternative to a mistake defense. The mere availability of a second plausible theory under which AFI could achieve the same successful result, even if it was unlikely to ultimately succeed under the doctrine of modification, would reduce the settlement value of the claim by approximately 5%.

The settlement value of the claim would be further reduced by the possibility of AFI successfully defending the claim on the grounds that the MSR Swap, if applied to correspondent loan MSR's and purchased MSR's, would not have withstood regulatory scrutiny. The MSR Swap was implemented and subsequently revised with the involvement and approval of Ally Bank's regulators, who, at its inception, refused to approve Ally Bank's acquisition of existing MSR's from ResCap entities and apparently insisted on the protection of the MSR Swap as a condition of Ally Bank retaining MSR's. Later, the parties agreed to increase the interest rate applicable to the Funding Fee paid by GMAC Mortgage to Ally Bank pursuant to the 2010 Net Funding Schedule in what the Examiner describes as a partially successful effort to appease the regulators. In light of these facts, the Examiner notes that Ally Bank would have substantial arguments that the arrangement would not have withstood regulatory scrutiny had it been applied to require payment of the value of purchased and correspondent-loan MSR's upon recognition. This possible defense would reduce the settlement value of the claim by approximately 20-30%.

Under these circumstances, I would expect plaintiff's initial settlement demand to be at approximately 60% of the gross amount of the claim (approximately \$1.725 billion), *i.e.*, \$1 billion, and defendant's initial offer at approximately 10% of the claim, *i.e.*, \$175 million. Taking into account the discounts and enhancements identified above, as well as the relative bargaining power of the parties and the back and forth to be expected in the negotiating process, I estimate the fair and likely settlement of the failure to pay value of purchased MSR's under MSR Swap claim at \$387.2 million.

Potential Damages:	\$1,725.0 million
Reduced By:	
30% inherent risk=	\$1,207.5 million
55% risk associated with mutual mistake defense=	\$543.4 million
5% risk associated with modification defense=	\$516.2 million
25% risk associated with regulatory-based defense=	\$387.2 million

²¹ See *Estate of Anglin v. Estate of Kelley*, 705 N.Y.S.2d 769 (N.Y. App. Div. 2000) (any change in an existing contract must have a new consideration to support it) (citations omitted).

c. Representation and Warranty Liabilities Under the 2001 and 2006 MMLPSAs

Examiner's Report References:

Section I.E.c pages I-10

V.B.3.a, b pages V-96 to V-109

VII.L.2.a pages VII.L-29 to VII.L-55

Description:

The potential liability of AFI or Ally Bank for representations and warranties provided by Old GMAC Bank in the 2001 MMLPSA and by Ally Bank in the 2006 MMLPSA.

Background:

Under the terms of the 2001 MMLPSA, Old GMAC Bank provided representations and warranties for all mortgage loans sold pursuant to its terms, while under the 2006 MMLPSA, Ally Bank provided representations and warranties only for second lien loans sold to GMAC Mortgage. ResCap/GMAC Mortgage later assumed financial responsibility for repurchase and representation and warranty liabilities on loans purchased from Old GMAC Bank and Ally Bank under the MMLPSA. The Examiner analyzed whether ResCap/GMAC Mortgage have claims against AFI and/or Ally Bank with respect to such liabilities based upon the representations and warranties provided by Old GMAC Bank under the 2001 MMLPSA and by Ally Bank under the 2006 MMLPSA.

As to loans purchased from Old GMAC Bank under the 2001 MMLPSA, the liabilities assumed by ResCap/GMAC Mortgage include: (i) charge-offs incurred as a result of loans repurchased from investors; (ii) a portion of the settlements with Fannie Mae and Freddie Mac in 2010; and (iii) a portion of the related 2013 "cure" settlements with Fannie Mae and Freddie Mac. The potential claims against AFI/Ally Bank for representations and warranties provided by Old GMAC Bank in the 2001 MMLPSA and by Ally Bank in the 2006 MMLPSA would also include a portion of the Trust R&W Claims covered by the \$8.7 billion proposed RMBS Trust Settlement Agreement.

Based upon an analysis of available records, the Examiner's Professionals estimate that the total dollar amount of representation and warranty and settlement liabilities incurred by GMAC Mortgage that would comprise the potential representation and warranty claims against AFI/Ally Bank under the 2001 and 2006 MMLPSAs total approximately: (i) \$278.2 million in charge-offs as a result of repurchases, and the 2010 settlements and 2013 "cure" settlements with Freddie Mac and Fannie Mae, relating to First Lien Loans sold by Old GMAC Bank under the 2001 MMLPSA; (ii) \$5.1 million for charge-offs as a result of repurchases of Second Lien Loans sold by Old GMAC Bank under the 2001 MMLPSA; (iii) no more than \$400 million relating to First and Second Lien Loans sold by GMAC Bank under the 2001 MMLPSA that are included in the securitizations that

comprise the Trust R&W Claims; and (iv) less than \$86.1 million relating to Second Lien Loans sold by Ally Bank under the 2006 MMLPSA that are included in the securitizations that comprise the Trust R&W Claims. For a variety of reasons detailed in the Examiner's report, including limitations in the available data, the estimated values of these potential liabilities are likely overstated.

Examiner's Analysis and Conclusions:

1. Ally Bank was not a party to, and did not assume, the 2001 MMLPSA, and is unlikely to be held liable on successor liability or indemnification theories.
2. It is likely that representation and warranty claims would be time-barred under the 2001 MMLPSA's two-year "survival" provision.
3. For first lien loans (but not second lien loans), the evidence supports the proposition that the 2001 MMLPSA was modified to eliminate representation and warranty liability.
4. The Examiner concluded that it is unlikely that any claim against AFI or Ally Bank for loan representations and warranties under the 2001 MMLPSA would prevail.
5. The Examiner concluded that while Ally Bank likely would be held to have provided representations and warranties for second lien loans under the 2006 MMLPSA, representation and warranty (or indemnification) claims against Ally Bank for second lien loans sold under the 2006 MMLPSA are unlikely to prevail because they would be time-barred under the two-year "survival" provision in the 2006 MMLPSA.

Review of Examiner's Analysis and Conclusion:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

Because Ally Bank is not a party to the 2001 MMLPSA and did not assume that agreement in the 2006 Bank Restructuring, ResCap would face many obstacles pursuing a claim against Ally Bank or AFI based on representations and warranties in the 2001 MMLPSA. The Examiner's well-reasoned analysis concludes that ResCap is unlikely to prevail on contractual claims under the 2001 MMLPSA, which would require ResCap to show either that (1) Ally Bank is responsible for the liabilities of Old GMAC Bank under a theory of successor liability; or (2) AFI is responsible for Old GMAC Bank's liabilities under (a) the indemnification provided in connection with the OTS approval of the 2006 Bank Restructuring or (b) the indemnification provisions of the 2005 Operating Agreement or the 2006 Amended Operating Agreement. Because ResCap would likely be unable to meet the elements of any of the recognized exceptions to the general rule of no successor liability, those claims do not add materially to the settlement value of the claims for representation and warranty liabilities under the 2001 MMLPSA. The potential claims based upon indemnification provided in connection with the OTS approval of the 2006 Bank Restructuring similarly add minimal, if any, settlement value to these claims based upon the OTS's non-objection letter with

respect to the indemnification proposed by AFI, which was narrower than that initially requested by OTS and would not subject AFI to liability under the 2001 MMLPSA. The potential claims based upon the indemnification provisions of the 2005 Operating Agreement or the 2006 Amended Operating Agreement are similarly weak and add only minimal settlement value based upon the plain language of those agreements as applied to the relevant facts.

More fundamentally, any claims against AFI or Ally Bank based upon the 2001 and 2006 MMLPSAs are unlikely to succeed because they are likely time-barred under the two-year “survival” provisions in those agreements, which the Examiner found would have resulted in the expiration of representations and warranties in those agreements, at latest, in November 2008 and June 1, 2009, respectively. In the face of such strong defenses based upon the “survival” clauses, which could likely be presented to a court as a motion to dismiss, AFI/Ally Bank would be unlikely to place significant settlement value on claims against them based upon representations and warranties in the 2001 and 2006 MMLPSAs.

The Examiner also concludes that it is more likely than not that AFI/Ally Bank would prevail on a claim that the 2001 MMLPSA had been modified to eliminate representations and warranties with respect to First Lien Loans, which would significantly reduce the potential total value of the claims based upon representations and warranties in the 2001 MMLPSA. Contractual modification is a fact-sensitive issue. Thus, if it was the only defense available to AFI/Ally Bank, they would likely place substantial settlement value on the claims under the 2001 MMLPSA, recognizing that even a nuisance value settlement should account for the anticipated expense of substantial discovery needed to develop that defense. Here, however, and as set forth above, AFI/Ally Bank have other strong defenses to potential claims based upon representations and warranties in the 2001 and 2006 MMLPSAs, particularly the “survival” clause defenses, which could likely be presented to the court without undertaking the type of costly discovery that would be involved in a contractual modification defense.

Under these circumstances, I would expect the defendants’ initial settlement offer to be based largely on the anticipated cost of defense in preparing a motion to dismiss the claims as time-barred, and therefore not material for purposes of this Opinion.

***d. Application of the Pipeline Swap To The “Funding To Sale” Period
And To Ally Bank-Originated Loans***

Examiner’s Report References:

Section I.E.1.d pages I-10-11

Section V.B.4, 5, and 10 pages V-114 to V-123 and V-178 to V-188

Section VII.L.2.c pages VII.L-58 to VII.L-64

Description:

Potentially there is a claim against AFI for applying the Pipeline Swap to the time period between the funding and the sale of loans and to loans originated by Ally Bank, notwithstanding contract language to the contrary.

Background:

GMAC Mortgage purchased and originated conforming loans with the intent to sell them to government-sponsored entities (GSE) while retaining the associated mortgage servicing rights (MSRs). Over time, GMAC's production came increasingly from Ally Bank. By 2009, almost all the loan production was being channeled through Ally Bank, which retained the MSRs on loans sold to Fannie Mae and Freddie Mac (but not to Ginnie Mae).

GMAC Mortgage and Ally Bank entered into a number of agreements related to this business. One of these Agreements was the Pipeline Swap, a derivative transaction in which GMAC Mortgage assumed certain risks and rewards related to changes in the market value of certain Ally Bank loans. Until 2008, the Pipeline Swap covered only Ally Bank's HFI portfolio. The swap was designed to insulate Ally Bank from changes in the market value of loans (typically due to interest rate changes) between rate lock and the funding of the loan. The Examiner noted that considering the original Pipeline Swap on its own, GMAC Mortgage would realize neither profit nor suffer loss assuming that its hedges were effective, although it presumably incurred some incremental hedging expense.

In 2005, the Pipeline Swap was amended to eliminate loans originated by Ally Bank, thereby limiting it to loans purchased by Ally Bank. The Pipeline Swap was not effective from April 2006 to April 2007, but was renewed effective May 1, 2007.

In July 2008, GMAC Mortgage and Ally Bank amended the Pipeline Swap because the FDIC was urging Ally Bank to document its hedges more thoroughly. Ally Bank's HFS loans were added to the Pipeline Swap, although it remained limited to purchased loans, and was not applicable to originated loans.

In addition, the Pipeline Swap continued to apply only to the period from rate lock until funding. In order for the loans to be fully hedged by the Pipeline Swap, however, the Swap would have needed to cover the period not just from rate lock to funding, but from rate lock to sale. Despite the fact that no change was made to the Pipeline Swap to extend the time period covered, many of the people involved believed that it did cover the entire period from rate lock to sale.

At the same time, the 2008 MMLPSA revised the pricing of first mortgage loans to a cost basis. Despite this, and based on the apparently mistaken understanding that the Pipeline Swap applied for the entire period from rate lock to sale, the loans were accounted for on a hedge-accounting basis, "marked to market," and sold to GMAC mortgage at market value, rather than at Ally Bank's cost. The combined effect was to preserve the same economics that had prevailed under prior version of the MMLPSA.

If, however, the July 2008 Pipeline Swap Schedule had been applied as written and covered only the period from rate lock to funding, rather than sale, then (1) application of hedge fund accounting would be improper under GAAP, so that the MMLPSA pricing would not be a marked to market price, and (2) the risks and rewards of changes in fair market value of the loans between funding and sale of the loans would reside with Ally Bank, not GMAC Mortgage. Further, the Pipeline Swap did not include brokered loans originated by Ally Bank, but it was applied to such loans.

In 2011, in response to FDIC pressure, the parties again amended the Pipeline Swap and related agreements. The 2011 Amendment extended the time period of the swaps to cover the time from funding to sale. It did not address the omission of loans originated by Ally Bank, however.

Examiner's Analysis and Conclusions:

1. With respect to extending the time period from funding to sale, although it is a close question, the Examiner found it more likely than not that the court would reform the Pipeline Swap under the doctrine of mutual mistake to include that time period. Therefore, while it is a close question, a claim for breach based on the extension of the Pipeline Swap is unlikely to prevail.

2. With respect to both extending the time period of the Pipeline Swap from funding to sale and extending it to loans originated by Ally Bank, it is likely that the court would find that the Pipeline Swap was modified to include both. Therefore, a claim for breach is unlikely to succeed.

Review of Examiner's Analysis and Conclusion:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions. The Examiner does not quantify any harm to GMAC Mortgage from the alleged breaches of the Pipeline Swap, and the Examiner further notes that, except for un-quantified incremental hedging costs, the economic effect on GMAC Mortgage was neutral, assuming that GMAC Mortgage's hedging was effective.

Settlement Considerations:

As the Examiner notes, the extension of the Pipeline Swap to include the period between funding and sale and to include loans originated by Ally Bank does not comply with the plain language of the relevant agreements. On their face, therefore, these appear to be strong breach of contract claims. However, as the Examiner found, they are unlikely to succeed due to strong affirmative defenses.

First, as to the extension of the Pipeline Swap to the time period from funding to sale, the Examiner found that the claim would not succeed because the contract would be reformed under the doctrine of mutual mistake. As noted by the Examiner, the parties drafting the Pipeline Swap agreements appeared not to have understood the effect of the language they chose. More importantly, ending the Pipeline Swap at the time of funding made little business sense. As a practical matter, GMAC Mortgage hedged the risk in the market as though it had assumed the risk for the entire time, further indicating the intent of the parties.

As acknowledged by the Examiner and discussed elsewhere in this report, however, the burden for establishing mutual mistake is high and would be on AFI. This creates risk that a reformation argument would not succeed and a breach would be found. Therefore, if no other affirmative defenses existed and damages from the breach could be shown, this claim would still have settlement value.

Second, as to both the extension of the Pipeline Swap to the time period from funding to sale and to loans originated by Ally Bank, there is substantial evidence that the parties modified the contract to include these. Specifically, as noted by the Examiner, the written record of the Brokering Customer Loans to Bank Project supports the view that the parties intended the Pipeline Swap to apply to brokered loans and to the “funding to sale” period. This strong written evidence, including e-mails, makes it likely that a court would find that the parties modified the Pipeline Swap, so there is no breach. Crucially, while AFI would bear the burden of proof on a claim of modification, it would not be a heightened burden. Therefore, given the high likelihood of establishing this defense as to both potential breaches, this claim has little settlement value.

Buttressing this analysis, the Pipeline Swaps appear to have been economically-neutral for GMAC Mortgage. Therefore, even if the claims had merit, the damages, if any, would be less than \$21 million the threshold for materiality I have used for the purposes of my report. Accordingly, these claims are not assigned any material settlement value.

e. Failure To Obtain Independent Director Approval

Examiner’s Report References:

Section I.E.1.e page I-11

Section VII.L.2.b pages VII.L-56 to VII.L-58

Description:

Whether there is a viable claim for failure to obtain independent director approval of various agreements and amendments to agreements that occurred between the inception of the 2005 Operating Agreement and November 2010.

Background:

The 2005 Operating Agreement and the 2006 Amended Operating Agreement barred any transactions between ResCap and GMAC affiliates that were not consistent with what parties would agree to at arm’s length and for fair value unless waived by the independent directors. The MMLPSA, Pipeline Swap, and MSR Swap were not entered into on terms that were available in the market and to which parties at arm’s length would have agreed. Yet there was no independent director approval of these transactions.

Examiner's Analysis and Conclusions:

1. The agreements at issue did not appear to result in losses for GMAC Mortgage, were not economically unfair to ResCap, and did not materially and adversely affect ResCap's creditors.
2. Neither AFI nor Ally Bank was involved in the decision whether to seek independent director approval.
3. The rights of third-party beneficiary creditors are limited to specific enforcement of the requirement of independent director approval, and money damages are specifically foreclosed.
4. Claims resulting from the lack of independent director approval of these transactions are unlikely to succeed.

Review of Examiner's Analysis and Conclusion:

After reviewing the facts and legal conclusions sets forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

The issues identified by the Examiner make it highly unlikely that claims regarding the failure to obtain independent director approval will succeed. Because the agreements at issue were not unfair to ResCap or the creditors, there are no damages and no likelihood of recovery. Even if there were, such damages would be barred by the contractual provisions barring monetary damages and limiting the remedy to specific performance. Accordingly, these claims are not material and do not add any settlement value.

2. Government Settlements

\$109.6 Million Preference Claim

Examiner's Report References:

Section I.E.2 pages I-12 to I-13

Section V.C pages V-210 to V-299

Section VII.F.5 pages VII.F-1 to VII.F-154

Description:

Whether the obligations of the Debtors and AFI were appropriately allocated with respect to two settlements between governmental entities on the one hand, and AFI, ResCap and certain of their subsidiaries on the other hand. This claim analysis reviews the potentially preferential payment of approximately \$109.6 Million made by GMAC Mortgage on March 14, 2012 pursuant to the DOJ/AG Consent Judgment.

Background:

Pursuant to the DOJ/AG Consent Judgment (the “Judgment”) memorializing the DOJ/AG Settlement between the Department of Justice and various state Attorneys General on the one hand, and AFI, ResCap and GMAC Mortgage, on the other, GMAC Mortgage paid approximately \$109.6 million to the government on March 14, 2012 (within 90 days of the Petition Date of May 14, 2012). The Judgment provides that the Defendant (defined, collectively, as AFI, ResCap and GMAC Mortgage) shall pay the “\$109.6 million hard dollar payment”. ResCap, through GMAC Mortgage, paid the entire \$109.6 million on March 14, 2012. The Examiner evaluated whether the approximately \$109.6 million payment may be avoidable as a preference under Code section 547 and recoverable from AFI “as an entity for whose benefit such transfer was made . . .”

Examiner’s Analysis and Conclusions:

1. AFI is liable, together with ResCap, GMAC Mortgage and RFC, for payment of the full amount of the \$109.6 million Judgment.
2. AFI received a direct, ascertainable and quantifiable benefit of \$109.6 million by being relieved of the obligation to make that payment if ResCap did not.
3. It is likely that an action against AFI to recover the March 14, 2013 payment of \$109.6 million as a preferential transfer under Bankruptcy Code section 547 and 550 would prevail.

Review of Examiner’s Analysis and Conclusion:

After reviewing the facts and legal conclusions set forth in the Examiner’s Report, I agree with the Examiner’s analysis and conclusions.

Settlement Considerations:

This claim would likely be pursued by a fiduciary such as a bankruptcy trustee, committee or post-plan confirmation trustee. This type of plaintiff is typically motivated to reach an early resolution of disputes in order to save costs and expedite distributions to creditors.

The Examiner reviewed the potential defenses which could be raised. In reviewing potential defenses, the Examiner addressed, *inter alia*, whether AFI was liable for the \$109.6 million payment in light of Exhibit I attached to the Judgment which provides that ResCap, GMAC Mortgage and RFC shall pay the \$109.6 million payment but is silent as to AFI’s payment obligation. Because of the debt forgiveness under the credit facilities provided by AFI, the Examiner also considered whether the “Earmarking Doctrine” would protect AFI from liability under Bankruptcy Code section 550, as well as other issues and potential defenses. The Examiner concluded, after his review and analysis of the interaction, relationship and effect of the relevant judgments, orders and agreements, that AFI was liable for the entire approximately \$109.6 million obligation and that, accordingly, the payment thereof by GMAC Mortgage is avoidable as a preference under Bankruptcy Code section 547 and recoverable from AFI as the entity for whose benefit the payment was made.

AFI would most likely vigorously defend the claim and raise all of the issues and potential defenses addressed by the Examiner. Although the Examiner concludes that the preference claim is likely to be successful, all litigation carries risk, uncertainty and expense. Similarly, AFI would also incur significant legal cost and expense to defend this claim.

Given the likelihood of success identified by the Examiner, I would expect the plaintiff's initial settlement demand at \$98.6 million, approximately 90% of the total amount of the claim, and defendant's initial offer at \$16.4 million, approximately 15% of the total claim. Taking into account the relative bargaining power of the parties and the back and forth to be expected in the negotiating process, I estimate a fair settlement of this preference claim at approximately \$60 million.

\$48.4 Million Preference Claim

Examiner's Report References:

Section I.E.2 pages I-12 to I-13

Section V.C pages V-210 to V-299

Section VII.F.5 pages VII.F-1 to VII.F-154

Description:

Whether the obligations of the Debtors and AFI were appropriately allocated with respect to two settlements between governmental entities on the one hand and AFI, ResCap and certain of their subsidiaries on the other hand. This claim analysis reviews the payments totaling approximately \$48.4 million made by GMAC Mortgage on May 10 and 11, 2012 pursuant to the terms of the various agreements under which GMAC Mortgage was required to indemnify Ally Bank for losses incurred as a result of certain loan modifications in connection with the government settlements.

Background:

Pursuant to the terms of the January 30 Letter Agreement and the A&R Servicing Agreement, GMAC Mortgage was permitted to modify certain Ally Bank loans to a greater extent than permitted under the Original Servicing Agreement, but GMAC Mortgage was required to indemnify Ally Bank for losses incurred resulting from such loan modifications to the extent they exceeded the modifications permitted under the Original Servicing Agreement. The A&R Servicing Agreement, however, was not actually executed until after the May 10 and 11, 2012 payments were made.

Examiner's Analysis and Conclusions:

1. It is likely that an action on behalf of GMAC Mortgage against Ally Bank to avoid and recover the May 10 and 11, 2012 payments as preferential transfers under Bankruptcy Code sections 547 and 550 would prevail.

2. Even though the A&R Servicing Agreement was not executed until after the subject payments were made, GMAC Mortgage was required to make those payments pursuant to the terms of the January 30 Letter Agreement.

Review of Examiner's Analysis and Conclusions:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

This claim would likely be pursued by a fiduciary such as a bankruptcy trustee, committee or post-plan confirmation trustee. This type of plaintiff is typically motivated to reach an early resolution of disputes in order to save costs and expedite distributions to creditors.

In determining that a preference action to avoid and recover the payments made to Ally Bank would likely prevail, the Examiner concluded that the evidence supports the proposition that Ally Bank, for whose benefits the payments were made, was a creditor of GMAC Mortgage and that the payments were made on account of an antecedent debt within 90 days prior to the Petition Date. The Examiner also analyzed the potential defenses which could be raised and primarily focused on whether GMAC Mortgage was obligated to pay Ally Bank since the A&R Servicing Agreement was not executed prior to the payments made on May 10 and 11, 2012. However, the Examiner also concluded that pursuant to the January 30 Letter Agreement, GMAC Mortgage was obligated to indemnify Ally Bank.

Ally Bank would most likely defend the claim and raise the foregoing issue (as well as requiring the trustee to meet its evidentiary burden on all other elements of a preference action). Although the Examiner concludes that the preference claim is likely to be successful, all litigation carries risk, uncertainty and expense. Similarly, Ally Bank would also incur significant legal cost and expense to defend this claim.

Given the likelihood of success identified by the Examiner with a claim of \$48.4 million, I would expect the plaintiff's initial settlement demand at \$43.6 million, approximately 90% of the total amount of the claim and defendant's initial offer at \$7.3 million, approximately 15% of the total claim. Taking into account the relative bargaining power of the parties and the back and forth to be expected in the negotiating process, I estimate a fair settlement of this preference claim at approximately \$32 million.

\$12.9 Million Post-petition Transfer

Examiner's Report References:

Section I.E.2 pages I-13

Section V.C pages V-210 to V-291

Section VII.F.7 pages VII.F-148 to VII.F-151

Description:

Whether the obligations of the Debtors and AFI were appropriately allocated with respect to two settlements between governmental entities on the one hand and AFI and ResCap and certain of their subsidiaries on the other hand. This claim analysis reviews the approximate post-petition payment of \$12.9 million made by Debtors to Ally Bank on June 13, 2012 pursuant to the terms of the various agreements under which GMAC Mortgage was required to indemnify Ally Bank for losses incurred as a result of certain loan modifications in connection with the government settlements. The post-petition payment, however, was for indemnification obligations for loan modifications which were performed prepetition.

Background:

Pursuant to the terms of the January 30 Letter Agreement and the A&R Servicing Agreement, GMAC Mortgage was permitted to modify certain Ally Bank loans to a greater extent than permitted under the Original Servicing Agreement, but GMAC Mortgage was required to indemnify Ally Bank for losses incurred resulting from such loan modifications to the extent they exceeded the modifications permitted under the Original Servicing Agreement. On May 12, 2012, that certain Interim Order Pursuant to Sections 105(a) and 363 of the Bankruptcy Code Authorizing the Debtors to Continue to Perform Under the Ally Bank Servicing Agreements in the Ordinary Course of Business [Dkt. No. 90] ("Interim Order") was entered.

Examiner's Analysis and Conclusions:

1. The approximately \$12.9 million payment was not made in the ordinary course of Debtors' business and, therefore, could only be made by the Debtor if the Bankruptcy Court authorized the Debtor to make such post-petition payments after notice and a hearing pursuant to Bankruptcy Code Section 363.

2. While a close question, it appears more likely than not that the Interim Order did not authorize the Debtors to make payments to satisfy obligations incurred prepetition.

3. While a close question, it is more likely than not that the approximately \$12.9 million post-petition payment relating to obligations incurred prepetition may be avoided under Bankruptcy Code section 549(a).

Review of Examiner's Analysis and Conclusions:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

This claim would likely be pursued by a fiduciary such as a bankruptcy trustee, committee or post-plan confirmation trustee. This type of plaintiff is typically motivated to reach an early resolution of disputes in order to save costs and expedite distributions to creditors.

In determining that an action to avoid the post-petition payment made to Ally Bank would more likely than not prevail, the Examiner concluded that the obligation to make a post-petition indemnification payment, which stemmed from GMAC Mortgage's responsibilities under a one-time settlement agreement with the government, would not be considered an ordinary course payment and, therefore, could only be made if authorized by the Bankruptcy Court.

The Examiner reviewed the Interim Order which authorized the Debtors' "to continue to perform under the terms of the [A&R] Servicing Agreement..." and considered the argument that such broad language could cover the \$12.9 million payment on account of a prepetition obligation. However, the motion seeking entry of the Interim Order did not specifically mention these obligations and stated that the Debtors "were not seeking to pay any prepetition claims through or pursuant to the [A&R] Servicing Agreement." The Examiner concluded that this representation clarifies any ambiguity found in the Interim Order regarding whether payments with respect to prepetition obligations were authorized. The Examiner considered other arguments, including, without limitation, the fact that the agreement which contained the indemnity provisions was attached to the motion, but concluded that the indemnification obligation was not conspicuously disclosed in the motion or exhibits thereto, and there was no mention of the amount of payments to be made. Therefore, the Examiner concluded that, while it is a close question, based on the Debtors' express representations in the motion and lack of disclosure it appears more likely than not that the Interim Order did not authorize the Debtors to make payments to satisfy obligations incurred prepetition.

Ally Bank would most likely defend the claim and raise the foregoing issue (as well as other issues noted and considered by the Examiner). The Examiner concludes that, although a close question, a claim to recover the post-petition payment is more likely than not to prevail, all litigation carries risk, uncertainty and expense. Similarly, Ally Bank would also incur significant legal cost and expense to defend this claim.

Given the likelihood of success identified by the Examiner, I would expect the plaintiff's initial settlement demand at \$10.3 million, approximately 80% of the total amount of the claim and defendant's initial offer at \$1.9 million, approximately 15% of the total claim. Taking into account the relative bargaining power of the parties and the back and forth to be expected in the negotiating process, I estimate a fair settlement of this post-petition transfer claim at \$7.1 million. Accordingly, this claim is not assigned any material settlement value and will not be included in the allocation of the \$2.1 billion settlement fund.

3. Causes of Action Relating To Use And Allocation Of ResCap's Tax Attributes

First and Second 2009 Tax Allocation Agreements

Examiner's Report References:

Section I.E pages I-13 to I-14

Section V.D pages V-300 to V-344

Section VII.K pages VII.K-1 to VII.K-49

Description:

The historical and prospective use and allocation, between ResCap and AFI, of ResCap's tax attributes.

Background:

As required by the November 2006 sale of 51% of AFI to Cerberus Capital Management, LP ("Cerberus"), ResCap was converted into a limited liability company and with AFI's consent, became a disregarded entity for federal income tax purposes in the fall of 2006. ResCap remained a disregarded entity, treated as a division of AFI from December 1, 2006 through June 30, 2009.

The 2006 Amended Operating Agreement required that "ResCap and GMAC shall maintain in effect an income tax allocation agreement that shall provide for two-way sharing payments based on the separately calculated tax liability or benefit of ResCap."²²

Between July 1, 2009 and November 2, 2009, ResCap became a partnership for federal income tax purposes. It reverted to disregarded entity status on November 2, 2009 to preserve substantial tax losses that would be generated by Ally Bank and its wholly-owned subsidiary, GMACB Asset Management Corporation.

In connection with this reversion, AFI suggested and drafted the First 2009 Tax Allocation Agreement. In December 2009, William Marx, Executive Director Tax Operations and Analysis at AFI, notified both AFI and ResCap that under the proposed tax allocation agreement, any deviation from strict stand-alone accounting would "in all cases be either neutral or more beneficial to ResCap." Consistent with that statement, AFI drafted the First 2009 Tax Allocation Agreement to treat ResCap generally as if it were a stand-alone taxpayer, except that it treated ResCap more favorably in that it entitled ResCap to be paid for its tax benefits that AFI could currently use even if ResCap could not currently use the benefits on a stand-alone basis. The proposed agreement provided that ResCap would be compensated based on AFI's use of ResCap's tax benefits, not hypothetical use by GMAC Mortgage Group LLC, a disregarded entity. The proposed agreement

²² 2006 Amended Operating Agreement, at § 2(b)(iii), [ALLY_0041818].

further provided that AFI would reimburse GMAC Mortgage Group LLC to the extent the Group would have to compensate ResCap for AFI's use of ResCap's tax benefits.

ResCap's legal staff advised the board that it believed that First 2009 Tax Allocation Agreement was "on terms consistent with those that parties at arms' length would agree to and for fair value." The ResCap Board unanimously approved the First 2009 Tax Allocation Agreement at its regularly-scheduled board meeting on August 6, 2010.

On September 9, 2010, Marx prepared a memorandum with instructions for executing the First 2009 Tax Allocation Agreement (and similar agreements) to among others, David DeBrunner, Chief Accounting Officer and Corporate Controller of AFI, and James Young, the CFO of ResCap. The memorandum and agreements were delivered promptly to DeBrunner, who executed the First 2009 Tax Allocation Agreement on behalf of AFI on or about September 13, 2010. DeBrunner believed he was acting pursuant to "delegated authority". The First 2009 Tax Allocation Agreement was not approved by the board of directors of AFI, but that practice was consistent with "Ally Accounting Policy 3330" which provided that "[a]ll tax sharing agreements must be approved by the respective boards of directors *or appropriate management designee*." ²³ The memorandum and accompanying agreements were apparently not delivered to Young until approximately October 15, 2010.

In the meantime, AFI began calculating the amounts due to ResCap for 2009 under the First 2009 Tax Allocation Agreement and realized the amounts due to ResCap would be substantial, *i.e.*, approximately \$250 million for 2009 and \$400 million for 2010. Starting on October 13, 2010, Marx raised his concerns and the possibility of proposing a less-favorable tax allocation agreement to ResCap with James Mackey, the CFO of AFI. The Examiner noted that Marx, on his own initiative, attempted to hold up the completion of the execution of the First 2009 Tax Allocation Agreement, collecting and destroying the partially-executed versions. In addition, it appears that Marx or Mackey (or both) spoke to Young and told him that the agreement had not been fully discussed or vetted within AFI. As a result, Young never signed the First 2009 Tax Allocation Agreement.

AFI provided ResCap with proposed revisions to the First 2009 Tax Allocation Agreement (the "Second 2009 Tax Allocation Agreement"). The proposed Second 2009 Tax Allocation Agreement removed ResCap's right to receive compensation from AFI for AFI's use of ResCap's tax benefits. In addition, ResCap became liable to pay AFI for tax on excess inclusion income, which totaled approximately \$50 million from 2009 to 2012.

The ResCap Board and Independent Directors reviewed the Second 2009 Tax Allocation Agreement. Counsel for the Independent Directors advised that the Second 2009 Tax Allocation Agreement seemed "very unfair" to ResCap. Nevertheless, after certain revisions were made, the Independent Directors believed that the fairness concerns had been resolved and the ResCap board approved the transaction, which was executed by all parties in 2011.

²³ Ally Accounting Policy 3330, Issued by Director of Accounting Policy, Effective June 1, 2011 (emphasis added), [EXAM12354093].

Although the Second 2009 Tax Allocation Agreement appears to be a pure stand-alone agreement in that ResCap is obligated to pay to AFI its hypothetical separate tax liability each year, the Examiner found that a closer look reveals that it is significantly worse for ResCap in that there is nothing in the agreement that would require AFI to pay ResCap any refund ResCap might be entitled to on a stand-alone basis. In addition, the Second 2009 Tax Allocation Agreement does not meet the requirement of the 2006 Amended Operating Agreement that it “shall provide for two-way sharing payments based on the separately calculated tax liability or benefit of ResCap.” Nor does it meet the standard set by the ResCap board when it approved the First 2009 Tax Allocation Agreement, *i.e.*, that the agreement be “on terms not more disadvantageous in any material respect to the holders of [ResCap’s] notes than those existing tax allocation agreement(s) [it is] intended to replace[.]”

Examiner’s Analysis and Conclusions:

1. While a close case, it is more likely than not that the First 2009 Tax Allocation Agreement was a valid, binding, and enforceable contract against AFI.
2. While a close question, it is more likely than not that ResCap’s CFO did not breach his fiduciary duties by failing to execute the First 2009 Tax Allocation Agreement.
3. It is likely that the Second 2009 Tax Allocation Agreement constituted a fraudulent transfer of the contract benefits belonging to ResCap under the First 2009 Tax Allocation Agreement.
4. While a close question, it is more likely than not that the Second 2009 Tax Allocation Agreement would not be set aside on equitable theories related to overreaching.
5. While a close question, it is more likely than not that ResCap’s Board of Directors did not breach its fiduciary duties by approving the Second 2009 Tax Allocation Agreement.
6. The benefits that ResCap would have received under the First 2009 Tax Allocation Agreement but for the Second 2009 Tax Allocation Agreement are estimated at \$1.77 billion.²⁴
7. Even if the First 2009 Tax Allocation Agreement is not enforceable, it is likely that ResCap could recover the payments made to AFI under the Second 2009 Tax Allocation Agreement in the approximate amount of \$50 million as a constructively fraudulent conveyance.
8. It is likely that the Second 2009 Tax Allocation Agreement would be found to be in violation of the 2006 Amended Operating Agreement.

²⁴ It should be noted that the Examiner’s estimate was based on the assumption that AFI would be making a \$750 million contribution contemplated by the terminated AFI Settlement and Plan Sponsor Agreement. If a \$2.1 billion dollar contribution was assumed, the benefits that ResCap would have received under the First 2009 Tax Allocation Agreement but for the Second 2009 Tax Allocation Agreement would have been greater.

Review of Examiner's Analysis and Conclusions:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

This contract claim would likely be pursued by a bankruptcy fiduciary such as a trustee or committee. Fiduciary plaintiffs are typically motivated to reach an early resolution of disputes in order to expedite distributions to creditors. All of the procedural hurdles that attend bankruptcy litigation would be present in this case, including (i) the constitutional authority of a bankruptcy court to render a final judgment in a state law contract dispute and a fraudulent transfer action, (ii) withdrawal of the reference, and (iii) demand for a jury trial. In addition, all litigation carries risk, uncertainty, and expense. As a result, it is highly likely that any settlement would reflect a discount of 20% from the face value of the claim.

The plaintiff would have to establish that the First 2009 Tax Allocation Agreement was binding on AFI, which the Examiner evaluates as a close case. Among the evidentiary and substantive issues highlighted by the Examiner are: (a) the lack of approval by AFI's board or senior management; (b) the testimony of participants that neither side considered the First 2009 Tax Allocation Agreement binding; (c) fading memories and unavailability of witness to events that occurred in 2009 and 2010; (d) lack of signature by ResCap; and (e) the destruction of partially signed copies. Because this is a close question, the risk involved in this threshold determination substantially lowers the maximum settlement value of the claim by 40%, even before the inherent risks of litigation are considered.

If the First 2009 Tax Allocation Agreement were deemed to be binding on AFI, then the failure of ResCap's CFO to execute the First 2009 Tax Allocation Agreement is of no moment. The failure to sign only matters if the First 2009 Tax Allocation Agreement is not binding. In that case, there is a possibility of a claim for breach of fiduciary duty against ResCap's CFO, who is one of the released parties. Based on the Examiner's finding that it is more likely than not that ResCap's CFO did not breach his fiduciary duties, with which I concur, this claim adds only minimal settlement value.

Even if the First 2009 Tax Allocation Agreement were deemed to be binding on AFI, that agreement was superseded by the Second 2009 Tax Allocation Agreement. Thus, to prevail on a claim for breach of contract damages related to the First 2009 Tax Allocation Agreement, the plaintiff would also have to convince the court to set aside the Second 2009 Tax Allocation Agreement. Although the Examiner concludes that the Second 2009 Tax Allocation Agreement is likely to be set aside as a fraudulent transfer, there are still significant risks associated with that claim. As the Examiner noted, AFI would likely argue that ResCap received substantial capital contributions and other assistance from AFI around the time of the Second 2009 Tax Allocation Agreement which could represent reasonably equivalent value for the transaction. Notwithstanding the Examiner's conclusion that he was unable to connect these contributions to the Second 2009 Tax Allocation Agreement, this issue creates further risk for the plaintiff. In addition, as noted above, the First 2009 Tax Allocation Agreement was overly favorable to ResCap. Undoubtedly, AFI would

vigorously defend the claim and raise the issues highlighted by the Examiner. Therefore, the value of the claim would be further reduced by 20%.

If the First 2009 Tax Allocation Agreement were to be found non-binding on AFI, the plaintiff could, nevertheless, seek to set aside the Second 2009 Tax Allocation Agreement as a fraudulent transfer. The Examiner concludes that ResCap did not receive reasonably equivalent value because there was no possibility for ResCap to ever receive a payment thereunder. However, the payments of approximately \$50 million are not material in this context because the value of the settlement amount of such payments would be less than \$21 million and therefore does not merit separate valuation for settlement purposes. The payments made are included in the total recovery if the First 2009 Tax Allocation Agreement is upheld.

The Examiner also considered whether the Second 2009 Tax Allocation Agreement could be set aside on an overreaching theory. As part of his analysis, the Examiner found that the violation of the 2006 Amended Operating Agreement was further evidence that the Second 2009 Tax Allocation Agreement was unfair and evidenced overreaching. This theory is an alternative argument which only matters if the Second 2009 Tax Allocation Agreement is not set aside as a fraudulent transfer. Because the Examiner concluded that the Second 2009 Tax Allocation Agreement is likely to be set aside as a fraudulent transfer, this theory is unlikely to come into play. Moreover, even if it did come into play, the Examiner concluded that this claim was more likely than not to fail. Accordingly, this claim adds minimal settlement value.

Likewise, the Examiner considered whether ResCap's board breached its fiduciary duties by approving the Second 2009 Tax Allocation Agreement. Again, this is an alternative theory which only applies if the Second 2009 Tax Allocation Agreement is not set aside as a fraudulent transfer. Because the Examiner concluded that the Second 2009 Tax Allocation Agreement is likely to be set aside as a fraudulent transfer, this theory is unlikely to come into play. As above, even if this claim did come into play, the Examiner concluded that it was more likely than not to fail. As a result, this claim also adds minimal settlement value. I estimate that, together, the three alternative theories add 5% to the settlement value of the claim.

On the other side, even assuming that AFI would dispute the Examiner's calculation, the magnitude of the claims (\$1,770 million) would likely be a strong motivating factor for AFI to settle. In addition, the likelihood of success identified by the Examiner would also incline AFI toward a substantial settlement. Legal fees and expenses in prosecuting and defending the claim would run into the tens of millions of dollars, but pale in comparison to the magnitude of the claims. Accordingly, I conclude that AFI would make a substantial offer to resolve these claims.

Under these circumstances, I would expect plaintiff's initial settlement demand to be \$1,500 million, approximately 85% of the gross amount of the claim, and defendant's initial offer to be \$265 million, approximately 15% of the claim. The back and forth of the negotiation process would ensue taking into account the discounts and enhancements identified above, as well as the relative bargaining power of the parties. The anticipated settlement range would be between \$750 million, 50% of the plaintiff's initial demand, and \$530 million, twice the defendant's initial offer, with a likely value of \$713.7 million, calculated as follows:

Potential Damages:	\$1,770.0 million
Reduced By:	
20% inherent risk =	\$1,416.0 million
40% on enforceability =	\$849.6 million
20% on fraudulent transfer =	\$679.7 million
Increased By:	
5% for alternative theories =	\$713.7 million

Claim re 2005 Tax Allocation Agreement

Examiner's Report References:

Section VII.K pages VII.K-1 to VII.K-17

Section V.D pages V-300 to V-345

Description:

Whether ResCap has a contractual claim against AFI under the Implemented 2005 Tax Allocation Agreement.

Background:

From March 2005 through November 30, 2006 ResCap was included in the GM consolidated federal income tax return. During this period, AFI and ResCap were parties to the Implemented 2005 Tax Allocation Agreement, pursuant to which ResCap was entitled to be compensated by AFI to the extent that ResCap's NOLs and other tax benefits were used by both GM and AFI to reduce each of their separate group tax liabilities. In the case of AFI, this was a hypothetical computation. ResCap received a payment from AFI of \$85.9 million for GM's and AFI's use of ResCap tax benefits for the tax year ending November 30, 2006. It was later determined that ResCap generated potential tax savings for GM of \$101 million for that tax year so that ResCap still had a contingent right to the remaining \$15.1 million in potential tax savings, which would become fixed if and when GM used the tax benefits. During the Examiner's investigation, GM confirmed that it used all of ResCap's tax benefits that were originally unused by GM in 2006; however, the Implemented 2005 Tax Allocation Agreement was terminated prior to GM's use of ResCap's tax attributes.

Examiner's Analysis and Conclusions:

It is likely that a contract claim in the approximate amount of \$15.1 million against AFI arising under the Implemented 2005 Tax allocation Agreement would prevail.

Review of Examiner's Analysis and Conclusions:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

This cause of action would likely be pursued by a fiduciary such as a bankruptcy trustee, committee or post-plan confirmation trustee. This type of plaintiff is typically motivated to reach an early resolution in order to save cost and expedite distributions to creditors.

As part of his extensive analysis of estate causes of action arising out of ResCap's tax sharing arrangements, the Examiner considered whether ResCap has a contract claim against AFI based on the tax benefits that were generated by ResCap and passed to, but unused by, GM in 2006. The Implemented 2005 Tax Allocation Agreement required that both GM and AFI be able to use ResCap tax benefits before ResCap would be entitled to compensation for use of its tax benefits (as opposed to the more standard construction which would require that only AFI use ResCap's tax benefits for ResCap to receive compensation). The Examiner also considered whether the claim would be time barred under applicable law. The Examiner concluded that ResCap's right to payment on account of its 2006 tax benefits was unaffected by the subsequent termination of the Implemented 2005 Tax Allocation Agreement as the agreement itself provided that even if it terminated, it would "continue to apply" to determine the parties' respective rights and obligations for the 2006 tax year and that ResCap's right to payment against AFI, albeit contingent and conditional, arose when it performed under the Implemented 2005 Tax Allocation Agreement (*i.e.*, when it generated tax benefits through November 30, 2006 that passed to GM).

Although the Examiner concludes that a claim to recover the \$15.1 million contract claim is likely to prevail, all litigation carries risk, uncertainty and expense. AFI would incur legal cost and expense to defend this claim which it is likely to lose.

Given the likelihood of success identified by the Examiner, I would expect the plaintiff's initial settlement demand at approximately 85% of the total amount of the claim (approx. \$12.8 million) and defendant's initial offer at approximately 15% (approx. \$2.3 million). Taking into account the relative bargaining power of the parties and the back and forth to be expected in the negotiating process, I estimate a fair settlement of this contract claim at approximately \$7 million. Accordingly, this claim is not material and will not be accorded any proposed allocation of the settlement fund.

4. Minnesota Insider Preference Claims

Examiner's Report References:

Section I.E.4 pages I-14 to I-16

Section VII.F.4 pages VII.F-26 to VII.F-95

Section VII.F.6 pages VII.F-122 to VII.F-148

Description:

Application of Minnesota's substantive fraudulent transfer law to transfers made by ResCap and RFC to AFI and its affiliates, including GMAC Commercial Finance LLC ("GMAC CF").

Background:

The Examiner reviewed seven transactions or loan facilities between ResCap as the borrower and AFI or AFI's affiliates, including GMAC CF : (1) the Secured Revolver Facility; (2) the A&R Line of Credit Facility; (3) the Secured MSR Facility; (4) the Servicing Advance Factoring Facility; (5) the Resort Finance Facility; (6) the 2008 Bank Transaction; and (7) the 2009 Bank Transaction (collectively, the "Transactions") to determine whether they implicate potential claims under Minnesota's Insider Preference Statute.

Examiner's Legal Analysis and Conclusions:

1. The Bankruptcy Court would likely apply Minnesota's Insider Preference statute to transfers made by ResCap and RFC to AFI in the six years prior to ResCap's bankruptcy filing.

2. Minnesota's version of the UFTA has an Insider Preference cause of action. A transfer is fraudulent under Minnesota's Insider Preference statute if: (1) there exists a creditor of the transferor-debtor whose claim arose before the transfer, (2) the transfer was made to an insider of the debtor, (3) the transfer was made for an antecedent debt, (4) the debtor was insolvent at the time of the transfer, and (5) the insider had reasonable cause to believe the debtor was insolvent.

3. Although a close call, the Minnesota Insider Preference statute allows a "substantially contemporaneous" limitation to the antecedent debt requirement despite the express wording of the statute.

4. The Minnesota Insider Preference statute has four defenses: good faith transferee; new value; ordinary course; and, good faith effort to rehabilitate the Debtor.

5. All of AFI's potential insider preference liability stems from the A&R Line of Credit Facility either because payments under the other loan facilities do not meet all the elements of a preference or are offset by new value contributions.

6. The Subsequent New Value Defense is available to AFI and, although a close call, it likely will be applied as a netting out of all value given against all transfers made during the subject transfer period. The value of non-cash contributions would be an issue.

7. Under Minnesota's Insider Preference statute, only the parties' history of dealings is to be considered in determining ordinary course of dealings. All of the transfers between the Debtors and AFI occurred post-insolvency, and thus the Examiner concluded that AFI would be unlikely to prevail on an ordinary course defense.

8. It is likely that AFI would not be able to establish the good faith effort to rehabilitate defense.

9. While Minnesota's Insider Preference statute allows for a six-year reach-back period from the Petition Date, the Examiner concluded that prior to December 30, 2009, AFI provided new value to ResCap and RFC which, taken as a whole as against extensions of credit, exceeded the value of the transfers made by ResCap and RFC to AFI during that same period.

10. From December 30, 2009 to the Petition Date, RFC made transfers to AFI under the A&R Line Of Credit Facility totaling approximately \$650 million, and AFI extended new value to RFC totaling approximately \$116 million. GMAC Mortgage and certain of the other Debtors entered into the A&R Line of Credit Facility as well. The estimated Insider Preference liability for AFI to RFC is \$534 million.

11. GMAC CF, a wholly-owned subsidiary of AFI, has approximately \$32 million in potential Insider Preference liability with a potential offset of \$1.5 million for new value. However, the Debtors' records are unclear as to whether the transfers were made by RFC or GMAC Mortgage. To the extent the transfers were made by GMAC Mortgage the Minnesota Insider Preference statute would not apply because Pennsylvania law applies to the GMAC Mortgage.

Review of Examiner's Analysis and Conclusion:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions. I believe it noteworthy that the Examiner was unable to find Minnesota state law directly interpreting Minnesota's ordinary course defense. The Examiner predicts that, in the absence of a baseline course of dealings predating the financial turmoil, AFI would be unable to look to Minnesota's ordinary course of dealings defense. I believe that application of this narrow reading of the statute overlooks the policy underlying preference defenses to protect creditors who continue to transact business with companies in financial distress. Moreover, under Bankruptcy Code section 547(c)(2)(A), some bankruptcy courts have deemed transfers to be in the ordinary course which occurred only during the preference period. Although looking to industry practices is not available under Minnesota's UFTA, AFI may nonetheless argue that its dealings with ResCap and RFC during the look-back period should be treated as ordinary course even though ResCap and RFC were in dire financial straits throughout the period.

Settlement Considerations:

Claims Against AFI

This cause of action likely would be pursued by a bankruptcy fiduciary such as a committee or a post-confirmation trustee. Although the Examiner concludes that Bankruptcy Code section 546(e)'s safe harbor likely does not apply to these transactions, if the court were to deem the safe harbor applicable, then an estate fiduciary might not be able to pursue these claims; these claims may then be pursued by a non-estate fiduciary, such as a creditor (pursuant to the *Tribune* work-around). The dynamics of settlement may change in the event a creditor seeking its own recovery were substituted for a fiduciary looking to maximize recovery for a broader group of creditors.

Fiduciary plaintiffs are typically motivated to reach an early resolution of disputes in order to expedite distributions to creditors. All of the procedural hurdles that attend bankruptcy litigation would be present in this case, including (i) the constitutional authority of a bankruptcy court to render a final judgment in a state law fraudulent transfer action, (ii) withdrawal of the reference, and (iii) demand for a jury trial. AFI would most likely vigorously defend the claim and raise all of the issues and potential defenses addressed by the Examiner. Although the Examiner concludes that the preference claim is likely to be successful, all litigation carries risk, uncertainty and expense. Similarly, AFI would also incur significant legal cost and expense to defend this claim. As a result, given the foregoing factors and the initial face-amount of the claim, I believe that it is highly likely that any settlement would reflect a substantial discount of 30% on the face value of the claim, reducing the claim to \$373.8 million.

Further, the Examiner's report details several issues in litigating these Insider Preference Claim that would reduce the settlement value of the claim. First, the Examiner's choice-of-law analysis, which determined Minnesota law to be applicable, is certainly well-reasoned but not an absolute. In the event that the court does not apply the Minnesota Insider Preference statute, AFI will have a stronger ordinary course defense to a preference claim. Likewise, the Bankruptcy Code section 546(e) safe-harbor may arguably remain available to AFI, though a creditor work-around may nonetheless allow for the later prosecution of this claim against AFI by a non-estate fiduciary, thus reducing the strength of the preference claim. Based on these additional issues, I believe that an additional discount of 20% of the claim is warranted, further reducing the claim to \$299.0 million.

On the other hand, the Examiner's claim value of \$534 million is conservative and there is the possibility, although likely remote, that the court would not net out all transfers between ResCap and AFI, thereby potentially increasing AFI's Insider Preference exposure. Also, there are numerous transfers that the Examiner concludes do not meet all the elements of a preference or are offset by new value contributions; however, the plaintiff would argue otherwise. This is a potential risk of additional exposure to AFI, and thus I have ascribed a 10% increase in value of the settlement amount, bringing the overall likely settlement value of the AFI claims to \$328.9 million.

Potential Damages:

\$534.0 million

Reduced By:

30% inherent risk= \$373.8 million

20% for choice of law= \$299.0 million

Increased By:

10% for no netting of transfers= \$328.9 million

As an alternative method of determining settlement value, given the likelihood of success identified by the Examiner, I would expect the plaintiff's initial settlement demand at \$480.6 million, approximately 90% of the total amount of the claim, and defendant's initial offer at \$80.1 million, approximately 15% of the total claim. Taking into account the relative bargaining power of the parties, the back and forth to be expected in the negotiating process, the strong merits of this insider preference claim, and the risk of additional exposure, I expect a reasonable settlement at the upper end of the range at approximately \$300 million.

Claims against GMAC CF

With respect to the Insider Preference claims of approximately \$32 million against GMAC CF, I believe that the sole defense raised by the Examiner was the new value offset of \$1.5 million, reducing the claim to \$30.5 million. As with the AFI Insider Preference claims, applying the same discounts and enhancements as above, likely settlement value of the GMAC CF claim is reduced to \$18.8 million.

Potential Damages: \$30.5 million

Reduced By:

30% inherent risk= \$21.4 million

20% for choice of law= \$17.1 million

Increased By:

10% for no netting of transfers= \$18.8 million

As an alternate method of determining settlement value, given the likelihood of success identified by the Examiner, I would expect the plaintiff's initial settlement demand to be \$28.4 million, approximately 90% of the total amount of the claim, and defendant's initial offer at \$4.7 million, approximately 15% of the total amount of the claim. Taking into account the relative bargaining power of the parties and the back and forth to be expected in the negotiating process, I estimate that a fair settlement of this preference claim at approximately \$18 million. This is below the materiality threshold of \$21 million. In addition, the Examiner was unable to determine from the Debtors' records whether the transfers were made by RFC or GMAC Mortgage. To the extent the transfers were made by GMAC Mortgage Pennsylvania law would apply, not the Minnesota Insider Preference statute with the longer reach back period. Accordingly, these claims are not assigned any material settlement value.

5. Ally Bank Transactions

a. 2006 Bank Restructuring

Examiner's Report References:

Section I.E.5.a pages I-16 to I-19

Section V.A.1.a pages V-1 to V24

Section V.A.2.a and b pages V-44 to V-70

Section VII.F.6.d pages VII.F-134 to VII.F-142

Section VII.E.2 pages VII.E-28 to VII.E-40

Section VII.L.1 pages VII.L-1 to VII.L-28

Description:

ResCap exchanged 100% ownership of Old GMAC Bank, a valuable asset, for non-voting shares in IB Financial, the holding company of Ally Bank, which were much less valuable, in a transaction where ResCap's Independent Directors were not informed of, and perhaps misled about, viable alternate structures that would have preserved the full value of Old GMAC Bank for ResCap.

Background:

In 2005 AFI and ResCap sought to separate from GM to reduce their high cost of funds due to GM's poor credit rating. Cerberus agreed to acquire 51% of AFI, which would accomplish the desired separation from GM. One glitch was that ResCap owned a federal savings bank, *i.e.*, Old GMAC Bank. If Cerberus acquired indirect ownership of a federal savings bank, it would become subject to the Bank Holding Company Act (BHCA), an undesirable consequence for Cerberus. Fortunately, AFI owned a Utah industrial bank, GMAC Automotive Bank. Indirect ownership of that industrial bank would not implicate the BHCA. A plan was devised to transfer the assets and liabilities from the federal savings bank to the industrial bank and avoid Cerberus becoming subject to the BHCA. Various structures for ownership of the industrial bank were discussed to account for the value and earnings contributed by ResCap. A structure was developed whereby ResCap was given non-voting shares in IB Financial, a new holding company for the industrial bank. However, AFI retained 100% of the voting shares in IB Financial. AFI wanted to retain 100% of the voting rights to accommodate GM's request for a call option on the automotive finance business. ResCap's Independent Directors were told that this arrangement was necessary to consummate the desired deal with Cerberus, but were not told that Cerberus' agreement placed no restriction on ResCap receiving voting shares and that AFI devised the structure to appease GM. The Independent Directors were also not shown a memo from ResCap's General Counsel suggesting that the proposed structure would violate a 2005 Operating Agreement for the benefit of ResCap's creditors that required Independent Director approval of transactions not at arm's length and at fair value. Nor were they

told that alternate structures were possible, or that ResCap's CEO had proposed giving ResCap voting control of the industrial bank. Nevertheless, ResCap's board, including the Independent Directors, unanimously approved the transaction. The Examiner estimates that the loss of equity value of the non-voting shares versus the equity in the federal savings bank was between \$533 million and \$608 million. Giving credit for the benefit to ResCap of lower borrowing costs after the Cerberus deal, the Examiner estimated that the net difference in value to ResCap was a loss of between \$390 million and \$465 million. The Examiner included \$360 million of cash and mortgages contributed by ResCap to the industrial bank, for which it received no stock or other consideration, in his calculations of net difference in value.

Examiner's Analysis and Conclusions:

1. While a close question, it is more likely than not that a fraud claim by ResCap against AFI related to the 2006 Bank Restructuring would not prevail in light of the *in pari delicto* defense and the *Wagoner* Rule.

2. While a close question, it is more likely than not that a breach of contract claim under the 2005 Operating Agreement by ResCap against AFI related to the 2006 Bank Restructuring would not prevail in light of the *in pari delicto* defense and the *Wagoner* Rule.

3. It is unlikely that a claim for tortious interference with the 2005 Operating Agreement would prevail against AFI related to the 2006 Bank Restructure because only a non-party may be liable for interfering with a contract.

4. A fraudulent transfer claim against AFI based upon actual intent is unlikely to prevail with respect to the 2006 Bank Restructure because the evidence does not support actual intent to hinder, delay or defraud creditors.

5. It is unlikely that a constructive fraudulent conveyance action against AFI would prevail with regard to the 2006 Bank Restructure because ResCap was not financially distressed.

6. While a close question, it is more likely than not that a claim for breach of fiduciary duties against dual-affiliated ResCap insiders would not prevail.

Review of Examiner's Analysis and Conclusion:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions. Moreover, since the date of the Examiner's Report, the Second Circuit has reaffirmed the *in pari delicto* doctrine and the *Wagoner* rule in *Picard v. JPMorgan Chase & Co. (In re Bernard L. Madoff Investment Securities, LLC)*.²⁵ I further note that the Examiner did not consider the possibility or likelihood of punitive damages on the fraud claim.

²⁵ 721 F.3d 54 (2d Cir. 2013).

Settlement Considerations:

The Examiner posited two different sets of possible values for these claims. First, the Examiner estimated the loss of equity value to ResCap at between \$530 million and \$608 million. Giving credit for the benefit to ResCap of the reduction in the cost of the lower borrowing costs, the net difference in value was between \$390 million and \$465 million. However, the core of the Examiner's conclusion was that alternative structures for completing the Cerberus transaction and reducing ResCap's borrowing costs were available. If these structures had been utilized, ResCap would still have received the lower borrowing costs without the loss of equity value. The measure of damages for both fraud and breach of contract claims is to put the injured party in the same position it would have been in but for the fraud or breach. Accordingly, for purposes of valuing settlement, I used the midpoint of the higher range of values, which was \$569 million.

This claim would likely be pursued by a bankruptcy fiduciary such as a trustee or committee. Fiduciary plaintiffs are typically motivated to reach an early resolution of disputes in order to save cost and expedite distributions to creditors. All of the procedural hurdles that attend bankruptcy litigation would be present in this case, including (i) the constitutional authority of a bankruptcy court to render a final judgment in a state law contract dispute and a fraudulent transfer action, (ii) withdrawal of the reference, and (iii) demand for a jury trial. In addition, all litigation carries risk, uncertainty, and expense. As a result, it is highly likely that any settlement would reflect a substantial discount (30%) from the face value of the claim.

The Examiner concluded that, while a close question, both the fraud and contract claims were likely to be barred by the *in pari delicto* doctrine and the *Wagoner* rule. The Examiner's conclusion is supported by the evidence and case law. As a result, any settlement would reflect a discount of over half the settlement value for these defenses, and I estimate settlement value using a 60% discount.

In addition, the Examiner correctly noted other problems with the claims even if the plaintiffs could get past the *in pari delicto* doctrine and the *Wagoner* rule. On the contract claim, the Examiner acknowledged that AFI could use the "sole obligation" language in Section 7 of the 2005 Operating Agreement to bar a claim under that Agreement. Although the Examiner concluded that the plaintiffs could defeat this defense by reliance on the implied duty of good faith and fair dealing, this issue creates further risk for plaintiffs. In addition, claims based on the implied duty of good faith and fair dealing are inherently risky, as they depend not on specific contract language, but on the finder of fact's subjective view of the conduct. Likewise, the Examiner also noted that if Minnesota law applies to the fraud claim, the *per curiam* decision of the Minnesota Supreme Court in the case of *Blenda Life Corp. v. Blenda Life, Inc.*,²⁶ appears to establish a blanket bar to a claim by a subsidiary against a parent. Although the Examiner was unsure whether a court would follow this decision, which has not been cited for this proposition since, and although this case would not apply to the contract claim which is governed by New York law, this issue creates further risk for the plaintiffs. Accordingly, any settlement would likely reflect a discount of an additional 25% due to risks on the merits.

²⁶ 196 N.W.2d 925, 927 (Minn. 1972) (*per curiam*).

The Examiner next concluded that a claim of tortious interference against AFI was not likely to succeed, based on the fact that a party cannot be liable for tortiously interfering with its own contract. I did not attribute any settlement value to this claim.

The Examiner also considered the possibility of breach of fiduciary duty claims against ResCap insiders (who also had dual affiliations with AFI) for concealing information from the independent directors.²⁷ In favor of the claim, the Examiner identified substantial evidence that material information regarding alternative structures was withheld. However, the Examiner also noted that because ResCap was not insolvent at the time, it is unclear that these insiders had a fiduciary duty to disclose this information. Moreover, there is a substantial risk that any such fiduciary duty claims are time-barred. Even if plaintiffs could surmount these hurdles, the harm from the alleged breaches is unclear, as the independent directors may have approved the transaction even if the information was not withheld. These arguments make a breach of fiduciary duty claim unlikely to succeed. Nevertheless, the Examiner found it to be a close question and I thus estimate that the existence of this alternative theory of recovery adds 10% to the settlement value of the claim.

On the other hand, even assuming that AFI would dispute the Examiner's calculation, the magnitude of the claims (\$569 million) would likely be a strong motivating factor for AFI to settle. In addition, the fact that these are close issues would also incline AFI toward a substantial settlement. Legal fees and expenses in prosecuting and defending the claim would run into the tens of millions of dollars. Accordingly, I conclude that AFI would make a substantial offer to resolve these claims.

Under these circumstances, I would expect plaintiff's initial settlement demand to be \$320 million, approximately 55% of the gross amount of the claim, and defendant's initial offer at \$60 million, approximately 10% of the claim. The back and forth of the negotiation process would ensue, taking into account the discounts and enhancements identified above, as well as the relative bargaining power of the parties. The anticipated settlement range would be between \$156 million, 50% of the plaintiff's initial demand, and \$120 million, twice the defendant's initial offer, with a likely settlement value of \$130.0 million, calculated as follows:

Potential Damages:	\$569 million
Reduced By:	
30% inherent risk =	\$398.3 million
60% on in <i>pari delicto</i> /merits =	\$159.3 million

²⁷ The Examiner also considered a claim for breach of fiduciary duty against the independent directors, but concluded that it was unlikely to succeed because the independent directors did conduct some due diligence, reasonably relied on the advice of outside counsel, and would likely be exculpated under ResCap's charter. In view of the minimal likelihood of success, this claim does not add any settlement value.

25% merits= \$119.5 million

Increased By:

10% for breach of fiduciary theory alternative= \$130.0 million*

* As noted above we have rounded down from \$131.4 million to \$130 million

b. 2008 Bank Transaction and 2009 Bank Transaction

Examiner's Report References:

Section I.E.5.b pages I-19 to I-20

Section V.A.1.b and c pages V-24 to V-44

Section V.A.2.c and d pages V-70 to V-89

Section VII.F.6.d pages VII.F-134 to VII.F-148

Description:

2008 Bank Transaction. At a time when it was insolvent, ResCap issued new ResCap Preferred Interests, convertible into Preferred Interests in IB Finance (the holding company for Ally Bank), in exchange for ResCap bonds that AFI had purchased on the open market. ResCap retained the right to redeem the IB Finance Preferred Interests.

2009 Bank Transaction. At a time when it was insolvent, ResCap sold its remaining non-voting Class M stock in IB Finance (the holding company for Ally Bank) to AFI and surrendered its right to redeem the IB Finance Preferred Interests. In exchange, AFI contributed to ResCap Senior Secured Notes of ResCap.

Background:

In March 2008, ResCap was experiencing liquidity problems and projected that it would be in breach of a Tangible Net Worth ("TNW") covenant as of March 31, 2008. AFI devised a plan to contribute ResCap bonds that AFI had acquired at a discount on the open market in exchange for newly issued Preferred Interests in ResCap that would be convertible into Preferred Interests in IB Finance, the holding company for Ally Bank. If AFI exercised its conversion rights, ResCap's nonvoting Class M tracking shares in IB Finance would be reduced *pro tanto*; however, ResCap retained the right to redeem the IB Finance Preferred Interests. ResCap's outside counsel reviewed and recommended the transaction and its outside financial advisors opined that the deal was at arm's length and for fair value. A similar exchange occurred in June 2008. The Examiner's advisors value the debt contributed to ResCap at \$841 million and the value of the Preferred Interest with conversion rights transferred by ResCap at between \$571 million and \$714 million.

In 2009, ResCap continued to experience liquidity pressure and teetered on the brink of breaching its TNW covenant. AFI again contributed ResCap bonds it had acquired on the open market and extended the maturity of the Initial Line of Credit Facility. In exchange, ResCap transferred its remaining IB Finance non-voting Class M tracking stock and its right to redeem the IB Finance Preferred Interests. The Examiners valued the debt received by ResCap at \$600 million and the stock and rights given up by ResCap at between \$106.5 million and \$217.5 million.

After the 2009 Bank Transaction, equity of the Mortgage Bank which the Class M shares tracked became negative and remained so up until April 30, 2013. Even in hindsight, the 2008 and 2009 Bank Transactions were favorable to ResCap.

Examiner's Analysis and Conclusions:

1. Although the transfer was to an insider at a time when ResCap was in financial distress, the weight of the evidence does not support a finding of actual intent to hinder, delay or defraud ResCap's creditors in connection with the 2008 Bank Transaction. An action to set aside the transfer as an actual fraudulent transfer is not likely to prevail.

2. ResCap received more than reasonably equivalent value in the 2008 Bank Transaction, making it unlikely that a constructive fraudulent transfer action would be successful.

3. Although the transfer was to an insider at a time when ResCap was in financial distress, the weight of the evidence does not support a finding of actual intent to hinder, delay or defraud ResCap's creditors in connection with the 2009 Bank Transaction. An action to set aside the transfer as an actual fraudulent transfer is not likely to prevail.

4. ResCap received more than reasonably equivalent value in the 2009 Bank Transaction, making it unlikely that a constructive fraudulent transfer action would be successful.

Review of Examiner's Analysis and Conclusion:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

Actions to set aside the 2008 and 2009 Bank Transactions as fraudulent transactions are outside the two-year look-back period of Bankruptcy Code section 548. The Examiner determined that these claims would be brought, if at all, under the Minnesota UFTA by a bankruptcy fiduciary using the strong arm provisions of Bankruptcy Code section 544. In light of the Examiner's conclusion that ResCap received reasonably equivalent value in each transaction, I believe that these claims would probably not be pursued. Therefore I ascribe no settlement value to the potential fraudulent transfer actions relating to the 2008 Bank Transaction or the 2009 Bank Transaction.

6. ResCap's Directors And Officers

Examiner's Report References:

Section I.E.6 pages I-20 to I-23

Section IV pages IV-1 to IV-69

Section VII.E pages VII.E-1 to VII.E-43

Section VII.K.2.b pages VII.K-31 to VII.K-37

Section VII.K.2.f pages VII.K-45 to VII.K-50

Description:

Whether any of ResCap's directors or officers are liable for breaches of fiduciary duty. Relatedly, whether AFI is liable for aiding and abetting any such breach of fiduciary duty.

Background:

The Examiner considered whether ResCap's directors or officers might be liable for breaches of fiduciary duty regarding several transactions and events, including: (a) the 2006 Bank Restructure; (b) the Second 2009 Tax Allocation Agreement; (c) James Young's failure to sign the First 2009 Tax Allocation Agreement; (d) the prepetition asset sales; (e) the January 30 Letter Agreement, and the A&R Servicing Agreement and the \$48 million indemnity payment thereunder; (f) the work of the Special Review Committee, the AFI Settlement and Plan Sponsor Agreement; and (g) the RMBS Trust Settlement Agreements. The Examiner also considered whether AFI could be liable for aiding and abetting any such breaches of fiduciary duties.

Examiner's Analysis and Conclusions:

1. Although troubling facts exist, no claims for breach of fiduciary duty by ResCap's directors and officers are likely to prevail.

(a) 2006 Bank Restructure

2. Potential breach of fiduciary claims with regard to the 2006 Bank Restructure exist because fiduciaries with dual affiliations to AFI and ResCap may have purposefully concealed material information from ResCap's Independent Directors. However, the Examiner is dubious that the dual-affiliated fiduciaries had a duty to disclose to the Independent Directors because their primary duty was to the parent, AFI, so long as ResCap was solvent, which it was in 2006, and there was no apparent self-dealing. In addition, it is likely that the applicable statute of limitations expired before ResCap's bankruptcy filing. Although the actions of the fiduciaries are troubling, breach of fiduciary claims related to the 2006 Bank Restructure, while a close question, are more likely than not to fail because of an absence of a duty to disclose and because the claims are untimely.

3. The Independent Directors potentially breached their fiduciary duty with regard to the 2006 Bank Restructure by failing to adequately investigate the option for ResCap to receive voting stock in the industrial bank and by not seeking a fairness opinion. However, it is unlikely that a claim against the Independent Directors for breach of fiduciary duty would prevail because they relied on the advice of counsel and the candor of their co-fiduciaries.

(b) Second 2009 Tax Allocation Agreement

4. Although the Second 2009 Tax Allocation Agreement was very unfair to ResCap, there was a thorough review process with the assistance of able advisors and there is no evidence to suggest a breach of the duty of loyalty or an intention to act against ResCap's best interests. The Examiner therefore concluded that, while a close question, a potential breach of fiduciary claim relating to the Second 2009 Tax Allocation Agreement would more likely than not be unsuccessful.

(c) Young's Failure to Sign First 2009 Tax Allocation Agreement

5. The evidence does not establish that Mr. Young intentionally (a) refrained from signing the First 2009 Tax Allocation Agreement with a purpose other than to advance the best interests of ResCap, or (b) acted in dereliction of his duties. The Examiner accordingly concluded that a claim of breach of fiduciary duty against him, while a close question, would more likely than not be unsuccessful.

(d) Prepetition Asset Sales

6. Breach of fiduciary claims related to the prepetition asset sales are unlikely to prevail. Although the transactions occurred in a hurried manner, there is no evidence that the fiduciaries lacked adequate information on which to base their decisions. In addition, ResCap may have benefited from the time pressure of the transactions and it received fair value in each case.

(e) January 30, Letter Agreement and the A&R Servicing Agreement and the \$48 million Indemnity Payment Thereunder

7. The January 30 Letter Agreement was the result of extensive arm's length negotiations and informed decisions. It provided fair value to ResCap and allowed it to continue operating despite liquidity challenges. A breach of fiduciary claim related to the January 30 Letter Agreement is therefore unlikely to be successful.

8. While a close question, the Examiner concludes it is more likely than not that a breach of fiduciary claim related to the \$48.4 million payment from ResCap to AFI for indemnification obligations without board authorization would not prevail because it was a reasonable exercise of business judgment by ResCap's executive.

9. The Examiner also concluded that potential breach of fiduciary claims relating to the A&R Servicing Agreement would not be likely to prevail. The A&R Servicing Agreement was the product of extensive negotiations with both sides represented, and was at arm's length and for fair value.

(f) The Work of the Special Review Committee, the AFI Settlement and Plan Sponsor Agreement

10. The Examiner concluded that although the work of the Special Review Committee was flawed and tainted by conflict of interest, a breach of fiduciary duty claim will more likely than not fail, although it is a close question. The Independent Directors on the Special Review Committee were disinterested and they relied heavily on counsel. The business judgment rule will likely preclude a breach of fiduciary duty claim.

11. Likewise, the Examiner concluded that the AFI Settlement and Plan Sponsor Agreement, although flawed, do not support claims for breach of fiduciary duty. Relying on the advice of counsel, ResCap's board concluded that the AFI Settlement was reasonable in light of the challenging and complex legal issues. The business judgment rule will likely preclude a breach of fiduciary claim.

(g) The RMBS Trust Settlement Agreements

12. The Examiner also found that the RMBS Trust Settlement Agreements were hurriedly approved with possibly flawed advice. However, the negotiations were conducted at arm's length by counsel upon whom the board reasonably relied. While a close question, it is more likely than not that a breach of fiduciary claim related to the RMBS Trust Settlement Agreements would not prevail.

13. Since none of the predicate breach of fiduciary claims is likely to prevail, the Examiner did not believe there is a viable claim of aiding and abetting a breach of fiduciary duty.

Review of Examiner's Analysis and Conclusion:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

Many of the events and transactions that may give rise to potential breach of fiduciary claims are analyzed separately for reasonable settlement value elsewhere in this report. Specifically, the claims for breaches of fiduciary duty claims relating to the 2006 Bank Restructure, the 2009 Tax Allocation Agreements, the pre-petition asset sales, the \$48.4 million payment, and the RMBS Trust Settlement Agreements are addressed in those sections. The existence and settlement value of breach of fiduciary duty claims related to those events or transactions are considered in those sections. Because duplicative damages are not available for such claims, these claims do not have additional settlement value above and beyond what is considered in the underlying transactions.

As for the remaining claims, claims for breach of fiduciary duty are expensive to litigate and are susceptible to threshold issues and strong defenses. Specifically, as the Examiner noted, claims for breach of fiduciary duty will have to overcome standing obstacles under Delaware law, and likely will have to be brought derivatively. In addition, the Examiner observed that the defendants

will likely rely on the business judgment rule, experts, and exculpatory clauses to defend against such claims. As a result, the settlement value of any claim for breach of fiduciary duty is subject to a significant discount of 40%, from its face value.

Turning to specific claims, the Examiner found that breach of fiduciary duty claims based on the January 30 Letter Agreement were not likely to succeed, as it was subject to extensive arm's length negotiation and ResCap received fair value. Given the cost of bringing such a claim, as well as the availability of the defenses noted above, such a claim is unlikely to be brought and does not add any settlement value.

Similarly, the Examiner found that claims regarding the A&R Servicing Agreement were not likely to prevail. The Examiner observed that the A&R Servicing Agreement was entered into at arm's length and for fair value, and it was critical to GMAC Mortgage's valuable servicing platform, so that the lack of approval by the GMAC Mortgage Board is not likely to be significant. Given the cost of bringing such a claim, as well as the availability of the defenses noted above, such a claim is unlikely to be made and does not add any settlement value.

Finally, the Examiner found that fiduciary duty claims related to the AFI Settlement and Plan Sponsor Agreement were not likely to succeed. The Examiner noted that the performance of the board was incomplete and tainted by conflicts of counsel. At the same time, the Examiner found that the board and the independent directors reasonably relied on the advice of outside counsel and that they were entitled to defer to that expertise. Accordingly, such a claim is not likely to be brought and does not add any settlement value.

Because these claims are subject to significant defenses, not likely to prevail, and not likely to be brought, they are not material and do not add any settlement value.

7. Single Entity Theories Of Liability

a. Piercing The Corporate Veil

Examiner's Report References:

Section I.E.7.a pages I-23 to I-25

Section VII.A pages VII.A-1 to VII.A-64

Description:

Whether ResCap and AFI operated as a single economic entity in an unjust or unfair manner such that a claim could be successfully asserted on behalf of ResCap to pierce its corporate veil, thereby making AFI liable for all of ResCap's debts.

Background:

ResCap was a wholly owned subsidiary of AFI. The Examiner's Investigation uncovered evidence of certain indicia that ResCap and AFI operated as a single economic entity. ResCap's

conduct in connection with a number of Affiliate Transactions (*e.g.*, the 2006 Bank Restructuring, the MSR Swap, the Pipeline Swap, the First 2009 Tax Allocation Agreement, the Second 2009 Tax Allocation Agreement, and the allocation of liability in connection with the FRB/FDIC Settlement and the DOJ/AG Settlement) departed in some important respects from appropriate corporate formalities, including the requirements of ResCap's own operating agreements.

Examiner's Analysis and Conclusions:

1. The application of Delaware law to the assessment of potential veil-piercing claims is consistent with the weight of authority in the Second Circuit.

2. Delaware law recognizes the existence of a claim on behalf of a debtor to pierce its own corporate veil.

3. An "alter ego" claim constitutes property of the debtor corporation, and the debtor-in-possession or bankruptcy trustee has exclusive standing to assert the claim.

4. A debtor that succeeds in piercing its own corporate veil may hold its parent liable for all of its debts.

5. In order to pierce the corporate veil and establish alter ego liability under Delaware law, a plaintiff must show (1) that the parent and subsidiary operated as a single economic entity, and (2) that an overall element of injustice or unfairness is present. The fact that the subsidiary is a limited liability company does not change the analysis.

6. Factors considered by courts applying Delaware law to determine whether a parent and its subsidiary should be deemed a "single economic entity" include: (1) undercapitalization, (2) failure to observe corporate formalities, (3) nonpayment of dividends, (4) insolvency of the debtor corporation at the time, (5) siphoning off of the corporation's funds by the dominant parent, (6) absence of corporate records, and (7) the fact that the corporation is merely a façade for the operations of the dominant parent.

7. The evidence does not support the proposition that ResCap was inadequately capitalized or insolvent at or around its formation.

8. The evidence does not support the proposition that AFI siphoned assets from ResCap.

9. The Examiner did not afford any weight to ResCap's nonpayment of dividends.

10. The Examiner concluded that the evidence supported the proposition that ResCap failed to follow or followed inconsistently, certain appropriate corporate formalities.

11. The Examiner concluded that a court would likely find that the operations of ResCap and AFI would be consistent with the operations of a subsidiary and its parent.

12. The Examiner does not consider any theory of injustice or unfairness likely to succeed.

13. Any veil-piercing claims asserted on behalf of ResCap against AFI are unlikely to prevail.

Review of Examiner's Analysis and Conclusions:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

Based upon the Examiner's factual and legal conclusions, it would initially seem that if this claim were pursued by a bankruptcy fiduciary, such as a trustee or a committee, it would likely be pursued on a contingent fee basis in view of the uphill battle evidenced by the Examiner's conclusions. However, there are third party contingent claims against AFI for RMBS litigation in the tens of billions of dollars. Thus, I believe that a creditors' committee and third party plaintiffs would work together to overcome any "standing" issues to receive authority from a court to pursue the single entity claim theories, including veil-piercing and alter ego, on behalf of the estate. Despite the fact that the Examiner concludes, and I agree, that veil-piercing and alter ego claims are unlikely to succeed, I conclude there is significant settlement value not to exceed \$480 million as discussed in the Third Party RMBS litigation analysis below.

b. Substantive Consolidation

Examiner's Report References:

Section I.E.7.b page I-25

Section VII.A.2 pages VII.A-65 to VII.A-85

Description:

Whether there is evidence to support the consolidation of AFI into the estate of ResCap or any other subsidiary.

Background:

Substantive consolidation is an equitable doctrine pursuant to which the assets and liabilities of affiliated entities are treated as one for purposes of a bankruptcy case. Intercompany claims of the consolidated debtors are eliminated, the assets of the consolidated debtors are treated as common assets, and the claims of outside creditors against any of the debtors are treated as claims against the consolidated entity. The only finding of the Examiner in support of substantive consolidation is the absence of certain corporate formalities. However, the Examiner uncovered no credible evidence that creditors dealt with ResCap and AFI as a single entity. Trading activity in ResCap bonds, CDS pricing and credit ratings, consolidated financial statements, and lack of guarantees (although guarantees might negate single entity status) were considered by the Examiner.

Examiner's Analysis and Conclusions:

1. Controlling Second Circuit law regarding substantive consolidation is set forth in the *Augie/Restivo*²⁸ case and requires that either (i) creditors dealt with the entities as a single economic unit and did not rely on their separate identities in extending credit, or (ii) the entities' affairs are so entangled that substantive consolidation would benefit all creditors.

2. While a close question, it is more likely than not that a court would find that ResCap and AFI operated as a single economic entity.

3. However, there is no evidence that creditors relied upon ResCap and AFI being a single economic entity.

4. The evidence does not support the proposition that AFI and ResCap's affairs were hopelessly entangled.

5. It is unlikely that a motion for substantive consolidation on either theory would prevail.

Review of Examiner's Analysis and Conclusions:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions. Both tests for substantive consolidation are fact specific.

Settlement Considerations:

If a claim for substantive consolidation were successful, creditors of ResCap would share in the assets of AFI *pari passu* with AFI's creditors (and vice versa) thereby significantly enhancing their recovery. Because of the fact intensive nature of substantive consolidation, it may be possible for a trustee or other estate representative to withstand a motion to dismiss, although based on the facts found by the Examiner, the likelihood of such success is minimal.

However, there is always the chance that litigation with a low probability of success will prevail and so the risk to AFI and its creditors increases. There are third party contingent claims against AFI for RMBS litigation in the tens of billions of dollars. Despite the fact that the Examiner concludes, and I agree, that a substantive consolidation claim is unlikely to succeed, I conclude there is significant settlement value not to exceed \$480 million as discussed in the Third Party RMBS litigation analysis below.

²⁸ *Union Savings Bank v. Augie/Restivo Baking Company, Ltd. (In re Augie/Restivo Baking Company, Ltd.)*, 860 F.2d 515 (2d Cir. 1988).

8. Debt Re-characterization

Examiner's Report References:

Section I.E.8 pages I-25 to I-26

Section VII.B pages VII.B-1 to VII.B-27

Section V.E.3, 5, and 8 pages V-357 to V-362, V-368 to V-372 and V-377 to V-379

Section VI.B.2 and 3 pages VII.B-1 to VII.B-13

Description:

Whether any of the claims held by AFI are subject to re-characterization as equity.

Background:

AFI holds two categories of claims: (1) claims under the A&R Secured Revolver Loan Agreement (approximately \$747 million) and under the A&R Line of Credit Agreement (approximately \$380 million); and (2) claims with respect to Unsecured Notes and Senior Secured Notes (aggregating \$2.4 billion in face principal amount) that were exchanged by AFI for, among other things, ResCap Preferred Interests in the 2008 Bank Transaction and ResCap's remaining IB Finance Class M Shares in the 2009 Bank Transaction.

Examiner's Analysis and Conclusions:

1. It is unlikely that an effort to re-characterize the AFI Secured Revolver Facility claims as equity would prevail.
2. It is unlikely that an effort to re-characterize the AFI Line of Credit Agreement claims as equity would prevail.
3. It is unlikely that an effort to retroactively re-characterize the Unsecured Notes and the Senior Secured Notes used by AFI as consideration in connection with the 2008 Bank Transaction and the 2009 Bank Transaction would prevail.

Review of Examiner's Analysis and Conclusions:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

This cause of action would likely be pursued by a fiduciary such as a bankruptcy trustee, committee or post-plan confirmation trustee. This type of plaintiff is typically motivated to reach an early resolution in order to save cost and expedite distributions to creditors.

The Examiner evaluated each of the AFI Secured Revolver Facility, the AFI Line of Credit Agreement, the Unsecured Notes and the Senior Secured Notes used by AFI as consideration in connection with the 2008 Bank Transaction and the 2009 Bank Transaction (i) in light of the evidence related to the material of issue whether the parties intended them to be debt or equity, (ii) application of the factors courts generally consider in determining whether to re-characterize claims as equity (the “*Autostyle* Factors”), and (iii) possible defenses. The facts and the application of the *Autostyle* Factors (as well as some other factors) support a determination that the all of the claims and notes constitute debt that cannot be re-characterized as equity.²⁹ Significantly, the Examiner’s investigation did not reveal any evidence that the parties ever intended, considered or treated the loans as anything other than loans.

The Examiner also considered possible defenses including, *inter alia*, the statute of limitations.

AFI would most likely vigorously defend any re-characterization action because, as set forth above, the facts and the law are almost exclusively in its favor.

Although it appears that AFI would successfully defend such actions, all litigation carries some risk, uncertainty and expense regardless of how strong a case may be. Thus, AFI may be willing to offer a small settlement (“nuisance settlement”) to prevent the limited possibility of losing the litigation, which settlement would be less than \$10 million and therefore not material to the allocation of the \$2.1 billion settlement fund. Alternatively, the fiduciary is unlikely to be willing to incur significant legal cost and expense to pursue these complex actions which are unlikely to prevail.

Given the Examiner’s factual and legal conclusions, I believe there is no material settlement value to these claims.

9. Equitable Subordination And Equitable Disallowance

Examiner’s Report References:

Section I.E.9 pages I-26 to I-28

Section VII.C pages VII.C-1 to VII.C-18

Section VII.D pages VII.D-1 to VII.D-3

²⁹ I note that the Court of Appeals for the Tenth Circuit in *Sender v. Bronze Group, Ltd. (In re Hedged-Investment Assocs., Inc.)*, 380 F.3d 1292 (10th Cir. 2004) discussed many of the *Autostyle* Factors plus some additional factors such as the right to enforce payment, the intent of the parties, failure of debtor to repay on due date, and participation in management, and did not include some of the *Autostyle* Factors such as sinking fund for interest, or security for payment. However, the Examiner separately considered some of *Sender*’s additional factors such as the intent of the parties and right to enforce payment. Also, in support of his statement that “courts would likely undertake an analysis of the *Autostyle* factors”, the Examiner cited *In Re BH S&B Holdings LLC*, 420 B.R. 112 (2009), a Bankruptcy Court case from the Southern District of New York.

Description:

Creditors assert that AFI's claims against ResCap, including \$747 million under the A&R Secured Revolver and \$380 million under the A&R Line of Credit, should be subordinated or disallowed to the claims of all other creditors under Bankruptcy Code section 510(c).

Background:

The Examiner investigated the following matters for evidence of inequitable conduct by AFI, harm to other creditors, or unfair advantage to AFI: (1) the 2006 Bank Restructuring, (2) the Second 2009 Tax Allocation Agreement, (3) the misallocation of revenues on brokered loans, (4) ResCap's forgiveness of subsidiary indebtedness and the 2009 Bank Transaction, (5) the Line of Credit Facilities, and (6) alter ego, asset stripping and aiding and abetting breach of fiduciary claims.

Examiner's Analysis and Conclusions:

1. ResCap and its creditors were harmed by AFI's inequitable and unfair conduct in connection with the 2006 Bank Restructuring in an amount of between \$390 million and \$608 million.

2. ResCap and its creditors were harmed by AFI's inequitable and unfair conduct in connection with the Second 2009 Tax Allocation Agreement in the approximate amount of \$50 million.

3. It is more likely than not that ResCap and its creditors were harmed by AFI and Ally Bank in the amount of approximately \$520.5 million with respect to the misallocation of revenues on the brokered loans.

4. AFI, however, provided ResCap with substantial capital support totaling in excess of \$8 billion in the form of cash contributions, debt forgiveness, and contributions of other assets.

5. While a close case, it is more likely than not that equitable subordination of AFI's claims would not prevail.

6. Equitable disallowance requires a showing of more serious conduct than that necessary for equitable subordination.

7. It is unlikely that equitable disallowance of AFI's claims would prevail.

Review of Examiner's Analysis and Conclusion:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

Each of the claims in which inequitable conduct was found by the Examiner is also ascribed value separately by the Examiner, therefore, each of those claims is evaluated separately for settlement purposes in this report and ascribed significant settlement value. However, I believe that the prospect that AFI's claims might be equitably subordinated or equitably disallowed adds little to the evaluation of those claims and has no independent settlement value on its own.

10. Constructive Trust Claim

Examiner's Report References:

Section I.E.10 page I-28

Section VII.I pages VII.I-1 to VII.I-17

Description:

Whether a constructive trust should be imposed on ResCap's interest in the mortgage division of Ally Bank or on proceeds of TARP funds that AFI received by virtue of its relationship with ResCap.

Background:

The Examiner considered whether AFI orchestrated the "Ally Bank Transactions," which consist of the 2006 Bank Restructuring, the 2008 Bank Transaction, and the 2009 Bank Transaction, to strip ResCap of its assets, resulting in AFI being unjustly enriched. The details of these transactions are discussed elsewhere in this report.

The Examiner also considered whether the Troubled Asset Relief Program ("TARP") funds received by AFI were received, at least in part, as a result of ResCap's financial difficulties, such that ResCap was an intended beneficiary of these funds and AFI was unjustly enriched by the retention of these funds. AFI received a total of \$17.2 billion under TARP, but the Examiner's focus was on the first \$5.7 billion received.

Examiner's Analysis and Conclusions:

1. A constructive trust claim is unlikely to prevail with regard to the Ally Bank Transactions. First, claims regarding the 2006 Bank Restructuring are governed by the 2005 Operating Agreement and the indenture governing the Unsecured Notes, and claims for unjust enrichment and a resulting constructive trust do not apply where the relationship is governed by an express contract. Second, the Examiner found that ResCap received reasonably equivalent values in the 2008 Bank Transaction and the 2009 Bank Transaction, negating any claim against AFI for unjust enrichment.

2. A constructive trust claim is unlikely to prevail for the TARP funds. The evidence shows that the funds went to AFI because of AFI's involvement in the automotive business, not because of ResCap.

Review of Examiner's Analysis and Conclusion:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

Regarding the 2006 Bank Restructuring, it is black-letter law that there can be no unjust enrichment when the claims at issue are governed by a written contract. Accordingly, constructive trust or unjust enrichment claims are highly unlikely to succeed. Moreover, as discussed elsewhere in the report, ResCap has much stronger claims regarding the 2006 Bank Restructuring. Therefore, the unjust enrichment/constructive trust theory does not add materially to the settlement value of those claims.

Similarly, based on the Examiner's well-supported finding that ResCap received fair value in the 2008 Bank Transaction and the 2009 Bank Transaction, a constructive trust claim regarding those transactions is highly unlikely to succeed. I discuss elsewhere that fraudulent transfer claims regarding the 2008 Bank Transaction and the 2009 Bank Transaction would not likely be pursued in light of the Examiner's determination that ResCap received reasonably equivalent value. For the same reason I do not believe that a constructive trust claim would be pursued.

Regarding the TARP funds, the Examiner found significant evidence that the TARP funds were given to AFI not because of ResCap but because of the government's interest in preserving the automotive industry. As a result, the claim is highly unlikely to succeed and AFI would likely be successful in having any claim dismissed on summary judgment. The only countervailing consideration is the sheer size of the claim - \$5.7 billion. To avoid the risk of liability as to this large number and the cost of litigating the claim, AFI would likely be willing to settle this for nuisance value, which I believe would be less than \$21 million and therefore not material for purposes of the allocation of the \$2.1 billion settlement fund.

11. Prepetition Asset Sales

Examiner's Report References:

Section I.E.11 page I-29

Section V.F pages V-383 to V-468

Section VII.F.6 pages VII.F-122 to VII.F-147

Description:

Whether any of seven prepetition asset sale transactions constitute constructive fraudulent transfers.

Background:

The Examiner reviewed the following sales of assets to affiliates of ResCap ("Prepetition Asset Sales"):

(a) *Health Capital Sale by RFC to GMAC CF in August 2007*

The sale of substantially all assets and operations of Health Capital for \$900.5 million;

(b) *June 2008 Model Home Sale by GMAC MHF to Cerberus*

The sale of 1,614 model homes and 127 lots for \$230 million plus Class B Junior Preferred Shares in CMH;

(c) *Resort Finance Sale by RFC and GMAC Canada to GMAC CF in July 2008*

Sale of substantially all of Resort Finance for cash consideration of \$96.1 million (later increased to \$111.1 million) plus the assumption of \$1,125 billion of debt;

(d) *Excess Servicing Rights Sales by GMAC Mortgage to Cerberus in July 2008*

Following two auctions, the sale to Cerberus, as highest bidder, of certain excess servicing rights on (i) Freddie Mac Loans with \$13.8 billion unpaid principal balance, and (ii) Fannie Mae loans with \$24.8 billion unpaid principal balance, capturing, respectively, \$591.2 and \$981.9 million notional interest-only securities;

(e) *September 2008 Model Home Sale by DOA Holding Properties, LLC to Cerberus*

Following an auction, the sale of two pools of model home assets for net cash proceeds of \$59.2 million;

(f) *ResMor Sale by GMAC Canada to AFI in January 2009*

Sale of all outstanding shares in ResMor for C\$82 million (approximately \$67 million as of December 31, 2008); and

(g) *US/UK Broker-Dealer Sale by RFC to AFI in May 2009*

Sale of RFC's interests in Ally Securities and RFCIL for \$42.3 million and \$18.1 million, respectively, plus payment to RFC of an amount equal to the entire outstanding principal due and payable under an existing \$50 million subordinated loan between RFC and Ally Securities.

Examiner's Analysis and Conclusions:

1. The evidence supports the proposition that RFC, GMAC Canada, GMAC Mortgage and their affiliate sellers received reasonably equivalent value in each of the Prepetition Asset Sales, with the possible exception of the June 2008 Model Home Sale by GMAC MHF to Cerberus.

2. While a close question with respect to the June 2008 Model Home Sale, it is more likely than not that a constructive fraudulent transfer claim against Cerberus would not succeed under existing law.

3. It is more likely than not that a court would find that the value received by RFC as the equity owner of GMAC MHF, as well as by GMAC MHF, would constitute reasonably equivalent value.

Review of Examiner's Analysis and Conclusions:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

These causes of action would likely be pursued by a fiduciary such as a bankruptcy trustee, committee or post-plan confirmation trustee. This type of plaintiff is typically motivated to reach an early resolution of disputes in order to save costs and expedite distributions to creditors.

The Examiner evaluated each of the Prepetition Asset Sales to determine if any would constitute a constructive fraudulent transfer under applicable law, focusing on whether or not the selling Debtor(s) received "reasonably equivalent value" for the transfer. In that regard the Examiner addressed three fundamental questions: (i) what was the form and value of the property transferred by the Debtor(s); (ii) did the Debtor(s) receive value in exchange for the property transferred, and, if so, in what form and amount; and (iii) was the value received by Debtor(s) a reasonably equivalent in exchange for the property transferred.

With respect to each of the following Prepetition Asset Sales, the Examiner concluded as follows:

(a) Health Capital Sale by RFC to GMAC CF in August 2007

Based on his analysis and the totality of the circumstances, including, without limitation, the valuation prepared by Houlihan Lokey and other market indicators, the evidence supports the proposition that RFC received reasonably equivalent value in this sale.

(b) June 2008 Model Home Sale by GMAC MHF to Cerberus

Although RFC received at least \$30 million less than the Fair Market Value, based on the totality of the circumstances, it is more likely than not that a court would find that the value received by RFC would constitute reasonably equivalent value in this sale.

(c) *Resort Finance Sale by RFC and GMAC Canada to GMAC CF in July 2008*

Based on the totality of the circumstances, including, without limitation, the Houlihan Lokey valuation, the Morgan Stanley Fairness opinion, prior sales attempts by Bear Stearns, Morgan Stanley's orderly liquidation analysis, and various adjustments to the calculation of the purchase price, the evidence supports the proposition that RFC and GMAC Canada received reasonably equivalent value in this sale.

(d) *Excess Servicing Rights Sales by GMAC Mortgage to Cerberus in July 2008*

Based on the totality of the circumstances, including, without limitation, the nature of the auctions, Pentalpha's memorandum, and market conditions at the time of the auctions, the evidence supports the proposition that GMAC Mortgage received reasonably equivalent value in this sale.

(e) *September 2008 Model Home Sale by DOA Holding Properties, LLC to Cerberus*

Based on the totality of the circumstances, including, without limitation, an auction process including non-affiliated bidders conducted by a nationally recognized broker in an arm's length manner, the degree of differential between the bids received and the temporal and contingent factors surrounding such bids, the evidence supports the proposition that RFC (as the owner of GMAC Canada), and GMAC Canada received reasonably equivalent value in this sale.

(f) *ResMor Sale by GMAC Canada to AFI in January 2009*

Based on the totality of the circumstances, including, without limitation, the fairness opinions by Goldin Associates and Sandler O'Neill, the GMAC Canada investment in ResMor in the prior year and other market indicators, the evidence supports the proposition that RFC as the owner of GMAC Canada, and GMAC Canada, received reasonably equivalent value in this sale.

(g) *US/UK Broker-Dealer Sale by RFC to AFI in May 2009*

Based on the totality of the circumstances, including, without limitation, the Goldin Associates valuation analyses and fairness opinion, and prevailing market indicators, the evidence supports the proposition that RFC received reasonably equivalent value in this sale.

The purchasers (AFI and Cerberus) would most likely vigorously defend any fraudulent transfer actions because, as set forth above, the facts and the law are almost exclusively in their favor as to all of the above transactions, with the possible exception of the June 2008 Model Home Sale transaction, and with respect to that sale the Examiner has concluded it is unlikely to prevail.

Although it appears that the purchasers would successfully defend such actions, all litigation carries some risk, uncertainty and expense regardless of how strong a case may be. Alternatively, the fiduciary is unlikely to incur significant legal cost and expense to pursue what would be complex actions which are unlikely to prevail.

Thus, Cerberus may be willing to offer a small settlement (“nuisance settlement”) with respect to the June 2008 Model Home Sale transaction to prevent the small possibility of losing the litigation. However, considering that the upside to the fiduciary in that transaction is likely to be no more than \$30 million, the fiduciary must also consider the cost and benefit in pursuing same.

Given the Examiner’s factual and legal conclusions, I believe there is no material settlement value to these claims.

12. Financing Affiliate Transactions

Examiner’s Report References:

Section I.E.12 page I-29

Section V.E pages V-350 to V-383

Section VII.F pages VII.F-1 to VII.F-154

Description:

Whether the terms of material prepetition financing Affiliate Transactions were entered into at arm’s length and on balance were more favorable to ResCap than would have been obtained in third party financings of comparable size and nature.

Background:

The Examiner reviewed the following prepetition financing Affiliate Transactions (“Financing Affiliate Transactions”):

- (a) Resort Finance Facility;
- (b) Secured MSR Facility;
- (c) Secured Revolver Facility;
- (d) Servicing Advance Factoring Facility;
- (e) Initial Line of Credit Facility;
- (f) ResMor Loan Facility;
- (g) Second Line of Credit Facility;
- (h) Amended and Restated Credit Facilities; and
- (i) BMMZ Repo Facility.

Examiner's Analysis and Conclusions:

All of these Financing Affiliate Transactions were entered into at arm's length and on balance were more favorable to ResCap than would have been obtained in the third-party financings of comparable size and nature.³⁰

Review of Examiner's Analysis and Conclusions:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

The Examiner evaluated the Financing Affiliate Transactions to determine if each was entered at arm's length or were less favorable to ResCap than would have been obtained in the third-party financings of comparable size and nature.

With respect to each of the following Financing Affiliate Transactions, the Examiner found as follows:

(a) *Resort Finance Facility*

This facility entered by RFC, as borrower, with AFI, as lender, was intended to be bridge financing while ResCap searched for a third party to purchase its Resort Finance business (at the time there were already discussions with third parties for such sale). Bear Stearns issued a fairness opinion concluding that the financial terms and conditions were no less favorable to RFC than the financial terms and conditions that would be expected to be obtained in a comparable financing with an unaffiliated third party at arm's length.

(b) *Secured MSR Facility*

This facility, entered by RFC and GMAC Mortgage as borrowers, and ResCap as guarantor, with AFI, as lender, was to provide additional liquidity. At the time, Barclays contemplated providing RFC with a secured facility and sent a term sheet. However, ResCap's liquidity needs were imminent and several months of negotiations could have been required to complete and syndicate a facility with Barclays. This led to a proposal for AFI to provide the Secured MSR Facility as a bridge to the Barclays facility. Morgan Stanley viewed the terms favorably, concluding, among other things, that the facility provided materially better economic terms than the proposed Barclays facility and existing facilities and was more attractive than facilities available in the then current marketplace. The search for a lender to refinance this facility proved to be futile. AFI ultimately forgave all indebtedness under this facility.

³⁰ The Examiner noted that notwithstanding this conclusion, certain of Financing Affiliate Transactions implicate potential Estate Causes of Action as discussed in Section VII.F (each of which are discussed in other sections of this report).

(c) *Secured Revolver Facility*

This facility, entered by RFC and GMAC Mortgage as borrowers, ResCap and various ResCap Subsidiaries as guarantors, and AFI as lender, was required to provide more liquidity due to looming credit maturities and capital needs. Two of the maturing credit facilities were (i) the unsecured JP Morgan 364 Day Facility of \$875 million and (ii) the JP Morgan 2005 Term Loan Facility in the amount of \$1.75 billion. On the closing date of this facility, AFI converted approximately \$1.3 billion of term loans under the JPMorgan 2005 Term Loan Facility (that AFI obtained through assignment) into the equivalent amount of the Secured Revolver Facility and \$450 million was borrowed thereunder to repay the principal of the JPMorgan 2005 Term Loan Facility. Also, this facility was used to pay the \$1.75 billion cash portion of the ResCap tender and bond exchange (pursuant to which \$8.6 million in unsecured ResCap notes were exchanged for approximately \$5.6 million of the Senior Secured Notes and Junior Secured Notes). As a result, the Secured Revolver Facility was fully drawn in the amount of \$3.5 billion with the proceeds used to exchange direct unsecured ResCap obligations owed to unaffiliated parties. The Secured Revolver Loan Agreement was amended and restated by the A&R Secured Revolver Loan Agreement.

(d) *Servicing Advance Factoring Facility*

ResCap, seeking to monetize certain non-GSE Servicing Advances, entered this facility with GMAC CF which was structured as a “true sale” of receivables and not financing. GMAC CF was reluctant to enter into this facility, but after intensive negotiations, agreed to an 85% advance rate which provided RFC and GMAC Mortgage with greater liquidity than they would have if they borrowed against the same assets under the Secured Revolver Facility. AFI entered into a collateral release agreement with respect to the Servicing Advances. Morgan Stanley delivered a fairness opinion with respect to this facility which concluded that the purchase price for the initial and contemplated subsequent purchase of receivables were fair to RFC. This facility contained provisions commonly found in receivables factoring transactions and other representations, warranties, termination events and indemnification provisions standard for receivables factoring transactions between unaffiliated parties.

(e) *Initial Line of Credit Facility*

Despite a first lien secured credit facility and second and third lien secured bonds, due to the favorable permitted lien and collateral release provisions in the Secured Revolver Loan Agreement, Senior Secured Notes Indenture and Junior Secured Notes Indenture, PATI and RATI, as borrowers, were able to enter this facility, guaranteed by ResCap, with AFI as lender, in the amount of \$430 million. Failing to find unaffiliated lenders, AFI became the lender of last resort for this facility. This facility exemplified an affiliate transaction more favorable to the borrowers than would have been obtained in a syndicated credit facility with unaffiliated lenders, and it would be extremely unlikely for a single lender to provide this facility. This facility was amended and restated by the A&R Line of Credit Facility.

(f) *ResMor Loan Facility*

GMAC Canada entered into this facility with AFI in the amount of CDN \$82 million. At the same time, AFI as purchaser, entered into a purchase agreement to purchase from GMAC Canada, as seller, the stock of 1020491 Alberta Ltd. and ResMor. The principal amount of this loan was intended to be repaid at the closing on the sale by setting it off against the purchase price. The sale closed and the loan was repaid as contemplated. Goldin Associates rendered a fairness opinion stating that the ResMor Sale was fair, from a financial point of view, to ResCap and its creditors (other than AFI). This facility contained very basic representations, warranties and covenants and the events of default were standard for facilities of comparable size and nature.

(g) *Second Line of Credit Facility*

Instead of increasing the Line of Credit commitment amount, AFI, as lender, provided PATI and RAHI, as borrowers, with this facility in the initial amount of \$370 million on substantially similar terms to the Initial Line of Credit Facility (and together with the Second Line of Credit Facility, the "Line of Credit Facilities"). This facility was later increased to \$470 million. On December 30, 2009 this facility and the Initial Line of Credit Facility were combined into the A&R Line of Credit Facility. Goldin Associates provided a fairness opinion concluding the terms of the documents were fair to ResCap and its creditors (other than AFI) and provided a further fairness opinion for the amendment of this facility to increase it. The provisions of this facility exemplified an affiliate transaction more favorable to the borrowers than would have been obtained in a third party financing. Goldin Associates delivered a favorable fairness opinion in connection with the increase of the cumulative commitment under the Line of Credit Facilities up to an additional \$500 million. Just before the consolidation of the Line of Credit Facilities, this facility was increased from \$470 million to \$670 million.

(h) *Amended and Restated Credit Facilities*

The Line of Credit Facilities were combined into one agreement and the Secured Revolver Loan Agreement was amended and restated to convert \$1.55 billion of Secured Revolver Facility Revolver Loans into Secured Revolver Facility Term Loans. After assignments of obligations, the new borrowers under the A&R Line of Credit were GMAC Mortgage and RFC, and they were required to provide a solvency representation which was similar to the solvency representation for the A&R Secured Revolver Loan Agreement. The A&R Line of Credit Agreement contained representations, warranties, covenants, events of default and indemnification provisions that were standard for facilities of comparable size and nature (and would be typical for a syndicated credit facility with unaffiliated lenders). Provisions exemplifying an affiliate transaction that were more favorable to the borrowers, were the same as those under the Line of Credit Facilities.

(i) *BMMZ Repo Facility*

GMAC Mortgage and RFC had each entered separate financing agreements with Citibank and Goldman Sachs in the form of mortgage loan repurchase facilities with an aggregate commitment of \$300 million. ResCap guaranteed these obligations. AFI proposed to ResCap a

new mortgage loan repo facility to be provided by one of its Subsidiaries, BMMZ, on substantially the same terms as proposed by Citibank, but with some advantages to ResCap including no commitment fee, more favorable advance rates, and no aggressive amortization schedule. Goldin Associates was engaged to provide an analysis of the terms of the Citibank proposal and of the AFI proposal, and to provide a fairness opinion. Goldin Associates concluded that this facility contained terms that were at least as favorable to ResCap and its creditors (other than AFI) as those that could reasonably be obtained by ResCap from an unaffiliated third party lender. This facility contained closing conditions, representations, warranties, events of default and indemnification provisions that were generally customary for a repo facility. This facility terminated in connection with the transactions consummated under the Barclays DIP Financing Agreement.

The Examiner determined, and I concur, that each of these Financing Affiliate Transactions were entered into at arm's length and on balance were at least as favorable to ResCap than would have been obtained in the third-party financings of comparable size and nature. The Examiner does not discuss any potential causes of action in this section of his Examiner's Report. However, he does note that certain of the Financing Affiliate Transactions are implicated in potential fraudulent transfer Estate Causes of Action, for example, but not by way of limitation, the Minnesota Insider Preference claims, however, the settlement value of those potential Estate Causes of Action are addressed elsewhere in this Opinion.

F. VALUE OF SETTLED ESTATE CAUSES OF ACTION

<u>Claims</u>	<u>Potential Damages</u> (in millions)	<u>Reasonable Settlement Amount</u> (in millions)	<u>Percentage of Potential Damages</u>
<u>ESTATE CAUSES OF ACTION</u>			
Breach of Contract for Misallocation of Net Revenues on Loans brokered by GMAC	\$520.5	\$268.2	51.5%
Breach of Contract for Failure To Pay Value of Purchased MSRs	\$1,725.0	\$387.2	22.4%
Breach of Representations and Warranties under 2001 and 2006 MMLPSAs	No Amount Given		
Breach of Contract Claims relating to Pipeline Swap	No Amount Given		
Breach of 2005 Operating Agreement or 2006 Amended Operating Agreement in connection with MMLPSA, Pipeline Swap or MSR Swap	No Amount Given		

<u>Claims</u>	<u>Potential Damages</u> (in millions)	<u>Reasonable Settlement Amount</u> (in millions)	<u>Percentage of Potential Damages</u>
Preferential Transfer relating to DOJ/AG Consent Order	\$109.6	\$60.0	54.7%
Preferential Transfer relating to 2012 Letter Agreement and A&R Servicing Agreement	\$48.4	\$32.0	66.1%
Unauthorized Post-petition Transfer relating to Indemnification Obligations under A&R Servicing Agreement	\$12.9		
Breach of contract regarding the First 2009 Tax Allocation Agreement	\$1,770.0	\$713.7	40.3%
Constructive Fraudulent Transfer relating to 2 nd 2009 Tax Allocation Agreement	\$50.0		
Contract Claim re 2005 Tax Allocation Agreement	\$15.1		
Minnesota Insider Preference Claims	\$566.0	\$328.9	58.1%
Fraud related to 2006 Bank Restructuring	\$569.0	\$130.0	22.8%
Tortious Interference with Contract relating to 2006 Bank Restructuring	No Amount Given		
Fraudulent Transfer in connection with Ally Bank Transactions	No Amount Given		
Miscellaneous Breach of Fiduciary Duty Claims against ResCap's D&Os	No Amount Given		
Aiding and Abetting Breach of Fiduciary Duty against AFI (other than re 2006 Restructuring)	No Amount Given		
Single Entity theories of liability regarding AFI and ResCap and/or affiliates, including Piercing Corp Veil and Substantive Consolidation	No Amount Given		

<u>Claims</u>	<u>Potential Damages</u> (in millions)	<u>Reasonable Settlement Amount</u> (in millions)	<u>Percentage of Potential Damages</u>
Debt Re-characterization	No Amount Given		
Equitable Subordination and Disallowance	No Amount Given		
Constructive Trust	No Amount Given		
Constructive Fraudulent Transfer Against Cerberus relating to 2008 Model Home Sale	\$30.0		
Fraudulent Transfer relating to Prepetition Asset Sales (other than 2008 Model Home Sale)	No Amount Given		
Financing Affiliate Transactions			
TOTAL		\$1,920.0	

**G. OPINION REGARDING PROPOSED POST-PETITION
TRANSACTIONS AND AGREEMENTS**

This section of the Examiner's Report did not address any potential claims.

**H. OPINION REGARDING SETTLEMENT VALUES OF POTENTIAL THIRD
PARTY CLAIMS**

In reaching an opinion concerning the likely settlement value of each claim, I have considered a number of factors, including the factors identified by the Supreme Court in *Protective Committee For Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*³¹ applicable to settlement negotiations outside of bankruptcy. Parties will consider: (i) the probabilities of success should the claim be litigated, (ii) the complexity, expenses and duration of litigating the claims, (iii) the possible difficulties of collecting on a judgment and all other factors relevant to an assessment of the settlement as well as factors relevant in determining the motivations of the particular parties to the litigation regarding settlement posture.

³¹ 390 U.S. 414, 424-25 (1968).

1. Third Party Claims Against AFI

a. RMBS Claims³²

Examiner's Report References:

Section I.H pages I-36 to I-39

Section VIII.C pages VIII-27 to VIII-109

Section VIII.D pages VIII-201 to VIII-202

Appendix VIII.D.1 page 1

Description:

The third-party liability claims ("RMBS Claims") against AFI, whether by investors or financial guaranty insurers (collectively, "Third-Party Claimants"), arising out of the issuance of residential mortgage-backed securities ("RMBS") by ResCap.

Background:

The RMBS Claims, estimated in the tens of billions of dollars, are the largest potential liability against AFI as the parent of ResCap. Between approximately 2004 and 2007, ResCap issued 392 private label RMBS securitizations with an original deal balance of \$221 billion. (Ally Securities was an underwriter on 105 of those securitizations; Ally Bank acted as loan custodian on approximately 34 of them.) A total of 38 separate suits have been brought by investors such as public pension funds, insurance companies, and others in federal and state courts throughout the country naming AFI as a defendant. Primarily, those suits allege false or misleading statements or omissions of material fact by ResCap in connection with the issuance of the RMBS securitizations in violation of the Securities Act of 1933, the Securities Exchange Act of 1934, various state securities acts and common law. The monoline insurers also have overlapping contract claims for breach of representations and warranties. The Examiner did not consider claims by the RMBS Trusts asserting breach of contract for failure to repurchase defective loans because the Debtors proposed to treat those claims in a separate settlement.

The Third-Party Claimants seek to impose liability on AFI under one or more of the following theories: (i) piercing of the corporate veil or alter ego; (ii) "control person" liability for ResCap's primary violation of federal or state securities laws; and (iii) common-law aiding and abetting fraud by ResCap. Total damages reported by Third-Party Claimants to the Examiner for the RMBS Claims are approximately \$6.3 billion, although the number is likely much higher in light of the fact that, as of March/April 2012, the outstanding principal balance of the RMBS issued by

³² The Examiner's Report discusses non-RMBS claims related to mortgage origination, servicing, foreclosure, insurance and other consumer type claims. He concludes that most would not survive a motion to dismiss. Accordingly, no settlement value has been ascribed to the non-RMBS third party claims against AFI.

ResCap was \$62.4 billion, with estimated lifetime losses of \$43.8 billion. The RMBS Claims are at various stages of the litigation process, with most at or just beyond the motion-to-dismiss stage and none having reached trial.

Examiner's Analysis and Conclusions:

1. It is unlikely that any pending or potential claims seeking to hold AFI liable for RMBS Claims asserted against ResCap under a veil-piercing or alter ego theory will prevail.

2. Even if the requisites for veil-piercing against AFI could be established, the Third-Party Claimants may lack standing because the veil-piercing claim belongs to the bankruptcy estate under applicable Delaware law.

3. While a close question, it is more likely than not that the Third-Party Claimants will not be able to establish "control person" liability against AFI under various federal and state securities laws for primary violations of those laws by ResCap.

4. Even if the requisites for "control person" liability against AFI could be established, certain of those claims could be time-barred by applicable statutes of limitations or repose.

5. It is unlikely that the Third-Party Claimants will be able to establish liability against AFI under common law claims of aiding and abetting fraud by ResCap in connection with the issuance of RMBS.

Review of Examiner's Analysis and Conclusion:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions. With respect to AFI's potential control person liability, the inquiry in each case asserting such claims is fact-intensive. Therefore, it is not possible at this point to conclude definitively whether control person liability will be found in any particular case.

Settlement Considerations:

The RMBS Claims are being pursued primarily by large institutional investors – insurance companies and pension funds – as well as monoline financial guaranty insurers. As such, they have the motivation and the means to prosecute full-scale, no-holds-barred litigation against AFI that could take many years and hundreds of millions of dollars to reach conclusion. Considering the size of the claims, the time and expense to conduct this complex litigation, the inherent risk warrants a discount of 50%.

The Examiner concludes, and I agree, that under applicable Delaware law efforts to impose liability on AFI on a veil-piercing or alter ego theory are unlikely to succeed. Delaware law is highly protective of the corporate form, which can be pierced only by a showing that ResCap and AFI operated as a single economic entity *and* by the presence of an overall element of injustice or unfairness. Delaware law requires consideration of multiple factors in determining whether to pierce

a corporate veil: “(1) undercapitalization, (2) failure to observe corporate formalities, (3) nonpayment of dividends, (4) insolvency of the debtor corporation at the time, (5) siphoning off of the corporation’s funds by the dominant parent, (6) absence of corporate records, and (7) the fact that the corporation is a mere façade for the operations of the dominant parent.” The Examiner’s extensive consideration of the evidence strongly militates against piercing the corporate veil here. This warrants a 70% discount in the value of the claims.

Furthermore, even if ResCap and AFI could be deemed to be a single economic entity, Third-Party Claimants would still need to show “injustice or unfairness” in the use of the corporate form. While the Examiner concludes that ResCap was left with unreasonably small capital and became balance sheet insolvent in 2007, this was due to sizeable operating losses beginning in the last quarter of 2006, not misconduct by AFI such as initial undercapitalization or siphoning of funds. In short, the Third-Party Claimants are unlikely to be able to show that AFI used ResCap as part of a corporate “shell game.”

The value of the veil-piercing theory is lessened more by the likelihood that, even assuming veil-piercing is warranted, the Third-Party Claimants lack standing to assert it. I agree with the Examiner that, under Delaware law, a veil-piercing claim generally belongs to the estate of the debtor, and not to creditors, at least where the harm suffered is “generalized” to all creditors. However, as discussed above, I anticipate that the standing issue can be finessed by the Third-Party Claimants cooperating with an estate fiduciary to pursue the veil-piercing theory. Nevertheless, in light of the discount already applied to the veil-piercing theory, I do not make any additional discount for the plaintiffs’ standing issue since I anticipate an easy resolution.

With respect to “control person” liability, the Examiner concludes that while it is a close question, it is more likely than not that the Third-Party Claimants will not be able to establish “control person” liability against AFI for the primary violations of ResCap in connection with the RMBS securitizations. “Control person” liability can arise under Section 15 of the Securities Act, Section 20 of the Securities Exchange Act or their state analogues and impose liability for material misstatements, omissions or fraud committed by a primary violator. After extensively analyzing the available evidence, the Examiner concludes that the Third-Party Claimants are unlikely to be able to establish that AFI exercised the requisite control over ResCap *with respect to the RMBS securitizations* during the relevant 2004-2007 period. While I agree with the Examiner’s analysis, “control person” issues are particularly fact-intensive, discovery in the various cases is incomplete, and different fact-finders are likely to weigh competing evidence differently. Accordingly, although these claims are more likely than not to fail, I discount the settlement value of the claims by only 60%.

Likewise, there appear to be strong arguments, especially in RMBS claims brought by investors, that some of their claims are barred by applicable statutes of limitations or repose. These also are fact-intensive questions, however, and not subject to definitive analysis at this point. The closeness of these questions leads us to discount the value of the RMBS Claims by 60% based on the statute of limitations.

The Examiner also concludes that the Third-Party Claimants are unlikely to prevail against AFI on the RMBS Claims on the common-law theory that AFI aided and abetted fraud by ResCap.

Such claims have been asserted in 14 of the 38 cases, 10 in RMBS Insurer Actions, four in RMBS Investor Actions. These claims are subject to higher burdens of proof and the heightened pleading requirements of Fed. R. Civ. P. 9. They require a showing of (1) the existence of fraud by ResCap, (2) actual knowledge of the fraud by AFI, and (3) AFI's substantial assistance in the commission of that fraud. While the existence of actual fraud by ResCap was beyond the Examiner's scope of investigation, the Examiner was presented with no evidence of AFI's actual knowledge of fraudulent conduct by ResCap. Nor was there any evidence that AFI provided substantial assistance to ResCap in committing the fraud as opposed to providing capital support and general corporate functions and services, which cannot be deemed to be the proximate cause of ResCap's fraud. Therefore, I do not attribute any settlement value to this theory.

While it was not possible for the Examiner to establish with precision the value of the RMBS Claims, at least \$6.3 billion in alleged damages has been asserted by Third-Party Claimants. The Examiner states that as of March/April 2012, the outstanding principal balance of RMBS was \$62.4 billion and the estimated lifetime losses were \$43.8 billion.³³ This data appears in the Declaration of Frank Sillman in support of the Debtors' motion to approve the RMBS Trust Settlement Agreements. Mr. Sillman also calculated the Debtors' potential repurchase requirements to RMBS Trusts for defective mortgages at \$6.7 billion to \$10.3 billion. Of course, he assumed that the Trusts could prove that the Debtors breached the representations and warranties in the governing agreements. Also, he was focused on the Debtors' potential exposure, not the parent company AFI which was not a party to the governing agreements.

In the Appendix, the Examiner lists the RMBS Claims Damages to the extent he could obtain information. I note that of the eighteen Parties/Actions listed, only three asserted damages greater than \$1 billion: (i) AIG, Allstate, Mass Mutual and Prudential - \$1.5 billion, (ii) FGIC - \$1.85 billion, and (iii) MBIA Insurance Company - \$2 billion. Nine of the other listed Parties/Actions with damage amounts shown are less than \$100 million. Only three others are over \$100 million with the highest of those being \$293 million. Given the magnitude of the expected lifetime losses of \$43.8 billion, and the magnitude of claims that could be asserted by investors, purchasers, and insurers, it is reasonable and conservative to estimate for settlement purposes that the total of the RMBS claims is in the range of \$20 billion.

Since the Examiner Scope Approval Order directs him not to attempt to independently quantify the Third-Party RMBS damages, I have looked for publicly available information on settlements in similar or analogous cases.

Cornerstone Research publishes an annual review of Securities Class Action Settlements. Their data is focused on suits brought by securities purchasers alleging fraudulent inflation in the price of a corporation's common stock. I have reviewed the 2012 Review and Analysis.³⁴ The year

³³ "RMBS Claims" is defined by the Examiner as "claims against the Debtors and the AFI Defendants on account of residential mortgage-backed securities." Examiner's Report, VIII-2.

³⁴ Ellen M. Ryan & Laura E. Simmons, *Sec. Class Action Settlements, 2012 Review and Analysis* (Cornerstone Research, Inc., Boston, MA), 2013.

2012 saw an extraordinary number of settlements in excess of \$100 million that Cornerstone Research classifies as “mega-settlements,” a significant portion of which were related to the credit crisis. Many of the larger cases take three to five years to settle indicating that they commenced in 2007 to 2009 when the stock price of financial corporations was impacted by their ownership or issuance of RMBS during the financial crisis. Approximately one-third of settlements in 2012 were for issuers in the financial industry and they rank highest in median settlement value.

Cornerstone Research posits that “estimated damages” is the most important factor in determining settlement amounts. Mega-settlements traditionally settle for a smaller proportion of estimated damages. Settlements as a percentage of estimate damages typically decrease as estimated damages increase. Larger cases tend to settle for smaller proportions of losses. For cases with estimated damages in excess of \$5 billion, the median settlement amount was 1.3% of the estimated damages. Institutional investors as lead plaintiffs, particularly public pension funds, tend to be associated with significantly higher settlement amounts according to Cornerstone Research. Also, the later the stage at which the litigation settles, the higher the settlement values. Cases that survive motions to dismiss or summary judgment motions tend to settle for higher amounts.

NERA Economic Consulting published *Recent Trends in Securities Class Action Litigation: 2012 Full-Year Review*.³⁵ Among the highlights is that financial institutions are no longer the focus of new filings, indicating that the wave of credit-crisis related litigation ended in 2012. The stage of the litigation, *i.e.* whether it has survived a motion to dismiss, summary judgment, or class certification, is important in settlement of securities class action litigation. Most cases are resolved before a class certification motion has been filed or decided. Investor losses are a powerful predictor of settlement size. There are only a handful of cases each year with investor losses greater than \$10 billion. As of the end of 2012, only ten securities class action cases ever have settled for over \$1 billion. Larger cases settle for a smaller percentage of investor losses. The median ratio of settlement to investor losses decreases as investor losses increase. The median settlement for cases with investor losses over \$1 billion has been 0.7% of the investor losses. Where the lead plaintiff is an institutional investor, especially a public pension fund, settlements tend to be larger.

The D&O Diary³⁶ publishes a list titled *Subprime and Credit Crises-Related Lawsuits, Settlements, Dismissals and Denials*. Of the sixty settlements listed, only one exceeded \$1 billion. That settlement was the Bank of America/Merrill Lynch Merger Case for \$2.43 billion, which is an outlier. Five cases settled for between \$500 million and \$730 million: Citigroup Bondholders Action - \$730 million, Wachovia Preferred Securities and Bond/Notes Litigation - \$627 million, Countrywide Financial - \$624 million; Citigroup - \$590 million; and Countrywide Mortgage Backed Securities Action - \$500 million. Both Citigroup cases and the Wachovia case were brought by purchasers of common stock or bonds issued by the defendant/parent corporation, not mortgage backed securities (“MBS”). Although the price of the stock or bonds were allegedly overstated by

³⁵ Dr. Renzo Comolli, *et al.*, *Recent Trends in Securities Class Action Litigation: 2012 Full-Year Review* (NERA Economic Consulting, New York, NY), Jan., 2013.

³⁶ Kevin M. LaCroix, *The D&O Diary Subprime and Credit Crisis-Related Lawsuits Settlements, Dismissals and Denials* (RT ProExec, Beachwood, OH) April, 2013.

the defendants' inaccurate statements regarding subprime and other mortgage products, the plaintiffs were not purchasers of MBS as are those pursuing ResCap and AFI.

In valuing ResCap as part of the solvency analysis, the Examiner's Financial Advisors identified Countrywide, Washington Mutual (WaMu) and Indybank as similar institutions to ResCap. Indybank is not listed as a party to a settlement in the D&O Diary, but Countrywide and WaMu are. The Countrywide Financial settlement for \$624 million was a class action by purchasers of common stock and notes issued by Countrywide, not MBS. Although plaintiffs allege that Countrywide did not accurately disclose problems with its mortgage business and portfolio that lead to an overstatement of stock value, that litigation is not exactly similar to the Third-Party RMBS claims against AFI.

The Countrywide Mortgaged Back Securities Action in the U.S. District Court for the Central District of California (2:10-CV-00302) that settled for \$500 million is analogous to the Third-Party RMBS claims against ResCap and AFI. The Countrywide MBS settlement involved 429 MBS with an original issue principal of \$351 billion. The Examiner's Report states that ResCap issued 392 RMBS with an original deal balance of \$221 billion. A settlement of ResCap's RMBS Claims on a proportional basis would be approximately \$315 million.

The Washington Mutual Securities Multi-District Litigation settled for \$208.5 million. Once again the plaintiffs were purchasers of securities issued by the parent company, Washington Mutual, Inc. (WMI) and not MBS. Because Washington Mutual Bank had been seized and sold by the FDIC, and the parent company, WMI, was in bankruptcy, the settlement fund consisted of contributions by the Directors and Officers insurance carriers (\$105 million), the underwriters (\$85 million) and the auditors (\$18.5 million). This is not indicative of reasonable settlement value of the secondary liability of AFI for RMBS issued by ResCap.

I mediated an objection in the bankruptcy case of WMI to the claim of the MBS plaintiffs who sued WaMu's securities subsidiary that was not a debtor in bankruptcy. That securities subsidiary had been acquired by JPMorgan Chase but had limited resources of its own. That underlying action involving hundreds of millions of dollars in alleged damages, settled for \$26 million.

Under these circumstances, even assuming that the gross value of the RMBS Claims is \$20 billion, the unlikelihood of the Third-Party Claimants prevailing on two of their three major theories (veil-piercing/alter ego and aiding and abetting fraud), the questionable likelihood of prevailing on their third major theory ("control person" liability), the statute of limitations defenses, and the significant cost, time and uncertainty of pursuing 38 separate cases, militate in favor of a deeply discounted settlement value. Securities litigation is like a game of *Survivor*. If plaintiff can survive a motion to dismiss, class certification or summary judgment, it is likely to reach a settlement with the amount increasing at each stage. Some of the pending cases against AFI have survived motions to dismiss and thus are prime candidates for settlement. Moreover, similar claims against other RMBS issuers such as Countrywide (whose liability is primary, not secondary like AFI's) have settled recently in the range of 0.14% of the original deal balance. Analysis of settlements of securities class actions by Cornerstone Research and NERA Economic Consulting consistently find that settlements in securities class actions seeking in excess of \$10 billion in damages average less

than 0.5% of claimed damages, and those are against the issuer, not a parent company. If AFI had the time and inclination to litigate its contingent exposure to ResCap's RMBS Claims, it could end up with a total cost less than the \$500 million paid by Countrywide.

On the other hand, AFI has some unique motivations that may influence its willingness to make a substantial payment to obtain the solid gold release it seeks in a confirmed plan of reorganization. AFI professes a great desire to repay the American taxpayers for the assistance provided in the TARP program and elsewhere. The looming specter of huge, unliquidated, contingent liabilities associated with ResCap preclude AFI from an initial public offering (IPO) or other alternatives to allow the U.S. government to monetize its stake in AFI and permit AFI to return to private ownership. Considering the massive size of the claims, the not-inconsequential risk that plaintiffs will prevail at least on the issue of control person liability, the time and cost required to defend the 38 cases, and the prospect of additional actions being filed, the RMBS Claims are not devoid of substantial settlement value. Taking into account the factors discussed above, especially the Countrywide settlement of larger, primary claims at \$500 million, I ascribe a settlement value of no more than \$480 million to the RMBS Claims, calculated as follows:

Potential Damages:	\$20,000 million
Reduced By:	
50% inherent risk =	\$10,000 million
70% veil-piercing alter ego risk =	\$3,000 million
60% risk on control person theory =	\$1,200 million
60% statute of limitations risk =	\$480 million
Total Settlement Value =	\$480 million

b. Fraudulent Transfer Claim

Examiner's Report References:

Section I.H.1.b page I-39

Section VIII.D.5 pages VIII-207 to VIII-215

Description:

Whether transfers of funds from Ally Securities to AFI can be recovered as fraudulent transfers.

Background:

On April 16, 2012, Ally Securities transferred \$200 million to AFI. On August 20, 2012 Ally Securities transferred \$25.5 million to AFI. Ally Securities characterized the two transfers to AFI as “distributions of excess capital”; thus, these transfers were payments of dividends to Ally’s sole member.

Examiner’s Analysis and Conclusions:

1. The Examiner’s Financial Advisers determined that Ally Securities’ total capital following the transfers was \$49.5 million and \$16.3 million, respectively. Since Ally Securities was then a defendant in ten RMBS-related lawsuits involving billions of dollars, the Examiner concluded that a reasonable quantification of these contingent liabilities would likely overwhelm Ally Securities’ equity on the transfer dates and that Ally Securities was insolvent on the transfer dates.

2. The transfers were not made for reasonably equivalent value.

3. It is likely that the transfers could be avoided as constructively fraudulent transfers.

4. While a close question, it is more likely than not that these transfers were actual fraudulent transfers.

5. It unlikely that a court would determine that these transfers constituted unlawful dividends.

Review of Examiner’s Analysis and Conclusions:

After reviewing the facts and legal conclusions set forth in the Examiner’s Report, I agree with the Examiner’s analysis and conclusions. The determinations of the amount of the contingent liability and of actual fraud are fact intensive.

Settlement Considerations:

Consideration of the avoidance of these transfers is only relevant to the evaluation of the reasonable settlement value of RMBS actions against Ally Securities, which are evaluated elsewhere in this report. The Examiner notes that Ally Securities has an equity value that is dwarfed by the potential third party RMBS claims. However, those third party creditors would seek to augment the funds available to Ally Securities by avoiding the transfers from Ally Securities to AFI discussed in this section. If any one of the three recovery theories discussed by the Examiner is successful, Ally Securities, or its representative, would be able to recover \$225.5 million from AFI. Although the actual fraud theory is fact intensive and the unlawful dividend theory is unlikely to prevail, the constructive fraudulent theory appears strong.

I would expect the plaintiff to open with a settlement demand of \$191.7 million, approximately 85% of the amount in controversy. AFI would likely initially offer to settle the litigation for \$33.8 million, 15% of the amount in controversy. Due to the strength of the law and

the facts, I would expect an ultimate settlement of approximately \$157.9 million, 60% of the amount in controversy. This fraudulent transfer claim is only relevant to the potential liability of Ally Securities for third party claims which would be considered in all of the third party claims against AFI. Thus, this fraudulent transfer claim has no independent settlement value.

2. Third Party Claims Against Ally Securities

Examiner's Report References:

Section I.H pages I-39 to I-41

Section VIII.C pages VIII-109 to VIII-129

Section VIII.D pages VIII-201 to VIII-203

Description:

Evaluation of the RMBS Claims against Ally Securities by Third-Party Claimants arising out of Ally Securities' role as an underwriter of RMBS issued by ResCap.

Background:

Between approximately 2004 and 2007, ResCap issued 392 RMBS securitizations with an original deal balance of \$221 billion. Ally Securities acted as lead or co-lead underwriter on 105 of them with a principal balance of \$57.2 billion, and also served as co-underwriter on an additional 131 of them. Suits by Third-Party Claimants against Ally Securities primarily allege claims for violations of Sections 11 and 12(a)(2) of the Securities Act of 1933 and analogous state statutes, fraud and fraudulent inducement, aiding and abetting fraud, and negligent misrepresentation. The RMBS Claims are at various stages of the litigation process, with most at or just beyond the motion-to-dismiss stage and none having reached trial.

Examiner's Analysis and Conclusions:

1. Neither ResCap nor AFI challenges that the Third-Party Claimants have standing to bring their securities law claims against Ally Securities or that Ally Securities' participation in the securitizations suffices to give rise to potential liability.

2. The claims of fraud and fraudulent inducement are similar to the securities claims because they are based on misrepresentations and omissions in the RMBS Offering Documents, but more difficult to prove because they require proof of Ally Securities' knowledge of the fraud and intent to defraud, along with justifiable reliance and damages causation.

3. No evidence supports the assertions that Ally Securities knowingly made untrue or misleading material statements, but such claim requires further factual development.

4. The claims of aiding and abetting fraud require proof of an underlying fraud, knowledge of the fraud by Ally Securities and substantial assistance to ResCap in perpetrating the

fraud. If the Third-Party Claimants can show a fraud, they are likely to prevail against Ally Securities on a claim of aiding and abetting.

5. A claim of negligent misrepresentation turns on the issue of whether a plaintiff can establish a special relationship between itself and Ally Securities, an inquiry beyond the scope of the Examiner's Investigation. Nevertheless, in most transactions between sophisticated corporate parties, no duty of care is required.

6. While Ally Securities participated as lead or co-lead underwriter on 105 RMBS deals with an original principal balance of \$57.2 billion and acted as co-underwriter on 131 more securitizations, its limited net equity (\$11.7 million as of December 31, 2012) may make it difficult for Third-Party Claimants to collect.

Review of Examiner's Analysis and Conclusions:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions. The ultimate issue of whether the RMBS Offering Materials contained misstatements or omissions of material fact was beyond the scope of the Examiner's Investigation. AFI likely received two avoidable fraudulent transfers totaling \$225.5 million in 2012. The reasonable settlement value of those claims should be added to Ally Securities' net equity in evaluating collectability.

Settlement Considerations:

Despite the overall enormity of the Third-Party RMBS Claims (billions of dollars), I believe that the settlement value of the claims against Ally Securities for its role as underwriter is ultimately affected more by its relative lack of resources to satisfy a judgment than the actual merits of the claims themselves and, therefore, the settlement value is small.

Each of the RMBS Claims against Ally Securities requires a factually-intensive inquiry with respect to each deal in which it was involved as an underwriter to determine whether the RMBS Offering Documents contained untrue misstatements or omissions of material fact.

Claims for violations under Section 11 of the Securities Act do not require a plaintiff to allege or prove scienter, reliance or loss causation; a plaintiff need only show purchase of a registered security from the issuer or in the aftermarket following an offering, participation by the defendant in the offering sufficient to give rise to liability (almost always the case for an underwriter), and that the registration statement contained an untrue statement of material fact or omitted a material fact required to be stated therein or necessary to make the registration statement not misleading.

Section 12(a)(2) of the Securities Act requires a showing that the defendant is a "statutory seller," the sale was effectuated by prospectus or oral communication, and the prospectus or oral communication contained an untrue statement of material fact or omitted to state a material fact necessary to make the statements not misleading.

A plaintiff's burden of proof under section 11 and 12(a)(2) of the Securities Act is a preponderance of the evidence, while a defendant such as Ally Securities bears the burden of proving affirmative defenses such as due diligence (*e.g.*, after reasonable investigation, the defendant believed the statements in the registration statement were true and there was no omission to make the statements not misleading) or loss causation (*e.g.*, a plaintiff's losses are not attributable to the misrepresentations, but rather to a general market decline).

Of all of the Third-Party RMBS Claims against Ally Securities, the Examiner concludes that the securities law claims have some viability.

The essentially identical common-law claims of fraud and fraudulent inducement place a much higher burden on a plaintiff. They require a showing by clear and convincing evidence of (1) a misrepresentation or omission of material fact which was false and known by the defendant to be false, (2) made with an intention to induce reliance, (3) justifiable reliance thereon, and (4) damages caused by the misrepresentation. It is likely that Ally Securities will argue that the sophistication of the Third-Party Claimants will make it difficult for them to establish justifiable reliance. The lack of proof at this stage of Ally Securities' actual knowledge of the statements' falsity, combined with the difficulty in establishing justifiable reliance, causes us to discount the settlement value of these claims significantly.

Aiding and abetting fraud requires (1) existence of a fraud, (2) knowledge of the fraud by the defendant, and (3) substantial assistance to the one committing the fraud. Although only one Third-Party Claimant (MBIA) has asserted such a claim against Ally Securities so far, I agree with the Examiner that if the existence of a fraud by ResCap is proved, a claim of aiding and abetting is likely to prevail.

Claims of negligent misrepresentation, however, are likely not to succeed. The key element to a negligent misrepresentation claim is demonstrating a duty of care owed by the defendant to the plaintiff. Most courts that have considered the question have found that sophisticated parties engaged in RMBS transactions do not owe one another a duty of care and have dismissed negligent misrepresentation claims at the pleadings stage. I do not attribute any settlement value to such claims.

Ordinarily, the sheer size of the Third-Party RMBS Claims, and the relative ease of prevailing at least on a securities law claim if an untrue statement or omission of material fact is established, would be cause for attributing a high settlement value to the Third-Party RMBS Claims against Ally Securities. That would be offset by ordinary litigation uncertainty and costs, although in this instance, Ally Securities' small equity (\$11.7 million as of December 31, 2012), not to mention the probability that most if not all of that could be consumed by defense costs, dictates a very low settlement value. Ally Securities equity could be augmented by avoiding transfers to AFI in the amount of \$225.5 million made in 2012, the reasonable settlement value of which I have estimated at \$157.9 million.

The claims have a face value of \$1 billion, which is reduced by 50% for inherent risk, and 20% for the difficulty of prevailing on the securities claims, for a merits value of \$400 million.

I anticipate that settlement discussions would quickly switch focus away from the merits of the claim to collectability. If the maximum fund available is Ally Security's net equity of \$11.7 million plus \$157.9 million, the reasonable settlement value of the fraudulent transfer claim against AFI, the reasonable settlement value at 10% of the funds available, approximately \$16 million, is appropriate in light of the dubious merits and risk of litigation.

Because the settlement value of these claims is less than \$21 million, it is not material in light of the magnitude of the \$2.1 billion settlement fund, and because I believe these claims are duplicative of claims made against ResCap and AFI, I ascribe no value to Third Party Claims against Ally Securities for purpose of allocating the settlement fund.

3. Third Party Claims Against Ally Bank

Examiner's Report References:

Section I.H pages I-41 to I-42

Section VIII.C pages VIII-129 to VIII-150

Section VIII.D pages VIII-201 to VIII-203

Description:

Evaluation of the RMBS Claims against Ally Bank by Third-Party Claimants arising out of Ally Bank's role as a loan originator and custodian of mortgage loan notes in connection with RMBS issued by ResCap.

Background:

Between approximately 2004 and 2007, ResCap issued 392 RMBS securitizations with an original deal balance of \$221 billion. Ally Bank and its predecessor, Old GMAC Bank, acted as loan custodian for approximately 34 of those deals representing a principal balance of a \$21.7 billion. Ally Bank was original loan custodian on six of the deals; Old GMAC was original custodian on 28. Ally Bank also acted as a loan originator in some 124 instances, in the approximate amount of \$16 billion. As a custodian, Ally Bank entered into contracts to hold and review the mortgage notes underlying the securitizations and to give various notices to the loan servicer, trustee and monoline insurer. The principal direct claims asserted against Ally Bank are (1) breach of contract for failing to provide proper notice or certifications under the custodial agreements and (2) aiding and abetting fraud by ResCap.

Examiner's Analysis and Conclusions:

1. There is no evidence that Ally Bank breached its obligations under the custodial agreements to gather, review and certify mortgage notes, although the Examiner did not audit individual mortgage notes. There is also no evidence that Ally Bank breached obligations to the

trustees and monoline insurers to alert them to breaches of representations and warranties related to the securitizations.

2. The Examiner reaches no conclusion with respect to the existence of an underlying fraud by ResCap, but notes that the Third-Party Claimants proffered no evidence of Ally Bank's actual knowledge of the alleged fraud. The Examiner also notes, however, that discovery has been limited and that evidence exists showing Ally Bank was "intricately involved" in the operations of ResCap. Likewise, if ResCap engaged in fraud, there is evidence that Ally Bank's financing activities constituted "substantial assistance" to that fraud.

3. Under applicable Utah law, it is unlikely that Ally Bank will be found to be a successor in liability of Old GMAC Bank and, therefore, the RMBS Claims against it would be limited to securitizations containing loans sold by Ally Bank after the 2006 Bank Restructuring.

Review of Examiner's Analysis and Conclusion:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

Under Pennsylvania law, which governs the custodial agreements, a claim for breach of contract requires three elements: (1) existence of a contract; (2) breach of its terms; and (3) damages. Although the mortgage notes themselves were not audited by the Examiner, there is no evidence that Ally Bank breached its contractual obligations to obtain, review and certify the mortgage notes underlying the securitizations. While the Third-Party Claimants allege that Ally Bank also breached its obligation to notify them of breaches of representations and warranties in the loan purchase agreements, Ally Bank was not required to look for breaches, only report them if it learned of them. There is no evidence that Ally Bank had actual knowledge of any breaches of representations and warranties by ResCap. Accordingly, I ascribe no settlement value to this claim.

With respect to the aiding and abetting claims, controlling New York law requires (1) the existence of an underlying fraud, (2) actual knowledge of the fraud, and (3) substantial assistance in committing the fraud. Even assuming a fraud by ResCap (which the Examiner does not), the Third-Party Claimants have not identified any evidence showing actual knowledge of the fraud by Ally Bank, although discovery has been limited and Ally Bank and ResCap were closely connected, with overlapping leadership and working cooperation between personnel. There is evidence that Ally Bank's financing activities provided "substantial assistance" to ResCap since Ally Bank was created to serve as a funding conduit for ResCap's securitization activity by providing loan originations. Given the lack of evidence of actual knowledge of the underlying fraud, albeit with limited discovery, this claim has minimal settlement value.

Moreover, it is unlikely that Ally Bank will be deemed to be a successor to the liability of Old GMAC Bank, so even if Ally Bank it is found liable, that liability would be limited to securitizations containing loans sold by Ally Bank after the 2006 Bank Restructuring, further reducing the already tenuous settlement value of the claims.

Under these circumstances, I conclude that these claims are not material and have only nominal settlement value.

4. Unsecured Noteholder Causes Of Action

a. Tortious Interference Under 2005 Indenture

Examiner's Report References:

Section I.H.4.a pages I-42 to I-43

Section VIII.C.5.a pages VIII-163 to VIII-190

Description:

Whether AFI tortiously interfered with the 2005 Indenture by causing ResCap to transfer all or substantially all of its assets in violation of the 2005 Indenture.

Background:

In the 2005 Indenture, ResCap covenanted not to transfer “all or substantially all” of its assets, with certain exceptions. The Unsecured Noteholders allege that AFI induced ResCap to breach this covenant by entering into a series of transactions in furtherance of a pre-arranged plan which resulted in the transfer of substantially all of ResCap’s assets. Those transactions include ResCap’s forgiveness of indirect and direct debts owed by certain subsidiaries, including GMAC Mortgage and RFC, and the 2009 Bank Transaction. Although none of the transactions would trigger the covenant when considered individually, the Unsecured Noteholders contend that the transactions should be aggregated for purposes of determining whether ResCap transferred substantially all of its assets.

Examiner's Analysis and Conclusions:

1. The Unsecured Noteholders would likely have standing to pursue this claim.
2. Although it is a close question, it is more likely than not that the transactions would not be aggregated.
3. Even if the transactions were aggregated, although it is a close question, a court would more likely find that the transactions did not result in a breach of the covenant.
4. Even if a court found a breach of the covenant, it is unlikely that a claim for tortious interference would prevail because the Examiner did not uncover any evidence that AFI intended to cause a breach and because AFI has an economic justification defense, as it acted to protect its own interests.

Review of Examiner's Analysis and Conclusion:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

This claim would be pursued by the Unsecured Noteholders at their own expense. Given the high hurdles found by the Examiner, the Unsecured Noteholders would likely be motivated to reach an early resolution of disputes in order to expedite distributions. All of the procedural hurdles that attend bankruptcy litigation would be present in this case including (i) the constitutional authority of a bankruptcy court to render a final judgment in a state law action, (ii) withdrawal of the reference, and (iii) demand for a jury trial. In addition, all litigation carries risk, uncertainty, and expense. As a result, it is highly likely that any settlement would reflect a substantial discount (30%) from the face value of the claim.

Before reaching the merits of their claim, the Unsecured Noteholders would first need standing to bring this claim. Although the Examiner concluded that the Unsecured Noteholders would have standing, he recognized standing as a serious threshold issue, which could be resolved against the Unsecured Noteholders, thereby creating additional risk and reducing the settlement value of the claim by 10%.

Once the merits are reached, the Examiner identified three hurdles that the Unsecured Noteholders would have to overcome to establish a claim of tortious interference: (1) whether to aggregate the challenged transactions; (2) whether the transactions, if aggregated, resulted in a transfer of substantially all of the assets in breach of the covenant; and (3) whether, if a breach were found, AFI intentionally procured the breach. The Unsecured Noteholders would have to win each of these issues to prevail on this claim.

First, under the leading *Sharon Steel*³⁷ case, whether to aggregate the challenged transactions is a fact-intensive inquiry dependent on whether the challenged liquidation was piecemeal or part of a preconceived plan. The Examiner found substantial facts indicating that the challenged transactions were not part of a preconceived plan. Accordingly, the Examiner concluded that it was more likely than not that the transactions would not be aggregated. The Examiner also concluded that the court would not apply the step-transaction doctrine advocated by the Unsecured Noteholders. AFI would no doubt litigate these issues thoroughly, raising the arguments and facts identified by the Examiner. Accordingly, the more-likely-than-not risk of not prevailing on this issue lowers the settlement value of the claim by 60%.

Second, even if the transactions were aggregated, the Unsecured Noteholders would have to show that the aggregated transactions resulted in the transfer of substantially all of ResCap's assets, resulting in a breach of the covenant. On a quantitative basis, the Examiner found that the transfers

³⁷ See *Sharon Steel Corp. v. Chase Manhattan Bank, N.A.*, 691 F.2d 1039 (2d Cir. 1982).

were approximately 50% of the book value of the operating assets and the total assets, which is most likely not sufficient to constitute a transfer of substantially all of ResCap's assets. On the other hand, on a fair market value basis, the transfers amounted to 34% of the total assets, but 100% of the operating assets. Because the quantitative analysis was unclear, the Examiner also conducted a qualitative analysis, and concluded it did not support the Unsecured Noteholders' claim. Therefore, while it is a close question, the Examiner concluded that it is more likely than not that the Unsecured Noteholders would not be able to establish this element. Again, AFI would litigate these issues thoroughly, using the points made by the Examiner. As a result, the substantial risk of not prevailing on this issue lowers the settlement value of the claim by another 60%.

Third, even if the aggregated transactions breached the covenant, the Unsecured Noteholders would have to show that AFI intentionally procured the breach without justification. However, the Examiner's Investigation did not uncover any evidence that AFI intended to cause such a breach. Moreover, the evidence reviewed by the Examiner showed that AFI's alleged interference was to protect its own economic interest in ResCap. As the Examiner notes, absent evidence of malice, fraud, or illegality, acting to protect an economic interest is a complete defense to the tortious interference claim. The Examiner found no evidence of malice, fraud, or illegality. The minimal likelihood that the Unsecured Noteholders would prevail on these issues reduces the settlement value of the claim by an additional 90%.

Because the likelihood of success is so low, any settlement offer from AFI would likely be a nuisance or cost of litigation settlement and therefore, not material.

b. Claims Related To The 2006 Bank Restructuring

Examiner's Report References:

Section I.H.4.b page I-43

Section VIII.C.5.b pages VIII-190 to VIII-201

Description:

Whether the Unsecured Noteholders have viable claims against AFI arising out of the 2006 Bank Restructuring.

Background:

The 2006 Bank Restructuring and potential estate claims against AFI are discussed in detail at Section E.5. The Examiner observed that the Unsecured Noteholders, as third-party beneficiaries, could have claims for breach of the 2005 Operating Agreement by AFI. The Examiner also considered whether misrepresentations or omissions by AFI to ResCap and its directors could give rise to fraud claims by the Unsecured Noteholders on the ground that the Unsecured Noteholders were harmed by ResCap's detrimental reliance. However, there is no claim here that misrepresentations or omissions were made directly to the Unsecured Noteholders, or that they relied on any such misrepresentations or omissions.

Examiner's Analysis and Conclusions:

1. The Unsecured Noteholders would have standing to assert these claims.
2. A breach of contract claim would likely be barred by the statute of limitations.
3. While a close question, it is more likely than not that a fraud claim against AFI would not be barred by the statute of limitations.
4. A fraud claim by the Unsecured Noteholders against AFI related to the 2006 Bank Restructuring would not prevail under Minnesota law because Minnesota law does not recognize claims based on reliance by third parties.
5. Although it is a close question, it is more likely than not that a fraud claim by the Unsecured Noteholders against AFI related to the 2006 Bank Restructuring would not succeed under New York law because it is not clear if New York would recognize a claim based on third-party reliance and it is not clear that the Unsecured Noteholders could make out such a claim.

Review of Examiner's Analysis and Conclusion:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I largely agree with the Examiner's analysis and conclusions, subject to two qualifications.

First, the Examiner concluded that the Unsecured Noteholders would have standing for two reasons: (1) they suffered a particularized injury under the 2005 Operating Agreement; (2) because *Wagoner* and the *in pari delicto* defense would bar the estate from bringing these claims (see Section E.5), the Unsecured Noteholders would have standing. I find only the second of these persuasive as to the fraud claim, which is the only possibly viable claim.

The case law cited by the Examiner makes clear that for a creditor to have standing to bring a claim against third parties outside of the bankruptcy proceeding, it must be suing for separate and distinct injuries it suffered directly, not for injuries to the debtor or the estate that harmed all creditors.³⁸ Where, however, the injury alleged is not particularized to the plaintiff, but rather is a generalized injury to the debtor that affects all creditors, then the creditor does not have standing.³⁹ The Examiner stated that a court would more likely than not find that the Unsecured Noteholders could allege a particularized injury here because of the Unsecured Noteholders' rights under the 2005 Operating Agreement, *i.e.*, because they are third-party beneficiaries of that agreement.⁴⁰

³⁸ See *Bankers Trust Co. v. Rhoades*, 859 F.2d 1096, 1101 (2d Cir. 1988); *Fisher v. Apostolou*, 155 F.3d 876, 881 (7th Cir. 1998).

³⁹ See *St. Paul Fire & Marine Ins. Co. v. Pepsico, Inc.*, 884 F.2d 688, 701 & 705-06 (2d Cir. 1989); *Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities, LLC (In re Madoff)*, 429 B.R. 423, 431 (Bankr. S.D.N.Y. 2010).

⁴⁰ Examiner's Report, VIII-191, fn. 1034.

While that may create a particularized injury as to the breach of contract claim,⁴¹ the Unsecured Noteholders' contract claims are barred by the statute of limitations and do not add value, as discussed below.

The key question, therefore, is whether there is any particularized injury with regard to the fraud claim which would confer standing on the Unsecured Noteholders. The alleged fraud claim is not based on an allegation that AFI made a misrepresentation or a material omission to the Unsecured Noteholders. Nor is there any allegation that the Unsecured Noteholders relied in any way on any such misrepresentation or omission. Rather, this fraud claim is based on reliance by ResCap. The injury allegedly resulting from ResCap's reliance is the loss in value to ResCap, because ResCap did not receive fair value in exchange for the 2006 Bank Restructuring, thereby reducing the fund from which ResCap's debts could be paid. Therefore, the injury is not a direct and particularized injury to the Unsecured Noteholders, but rather an injury to ResCap and a generalized injury to all the creditors, so that the Unsecured Noteholders would likely not have standing.⁴²

I find the alternative ground for standing to bring a fraud claim more persuasive. As discussed in Section E.5, the Examiner found that, although it is a close question, it is more likely than not that the estate could not bring a fraud claim because of the *Wagoner* rule and the *in pari delicto* defense. If those defenses applied, then the estate could not bring the claim, but the Unsecured Noteholders could.⁴³ Thus, the Unsecured Noteholders would have standing only to the extent that the estate were barred from bringing the claim.

Second, the Examiner did not expressly consider who would benefit from a recovery on these claims. As discussed above, the alleged fraud claim is not based on an allegation that AFI made a misrepresentation or a material omission to the Unsecured Noteholders, or that there was any reliance by the Unsecured Noteholders. Again, the harm was that ResCap did not receive fair value in the 2006 Bank Restructuring. This is an injury to all creditors, not a particularized injury to the Unsecured Noteholders. Moreover, the only reason I believe that the Unsecured Noteholders are likely to have standing to pursue this claim is because, although it is a close question, the estate is likely barred from bringing it under *Wagoner*. Therefore, if there were a recovery on the fraud claim, I believe that the recovery would inure to the benefit of the estate and all its creditors, not just the Unsecured Noteholders. As a result, the claims of the Unsecured Noteholders are duplicative of the estate's claims regarding the 2006 Bank Restructuring, which I consider at length in Section 5.E, above. Because these claims are duplicative of the estate's claims, and because the benefit would inure to the estate regardless of whether it is brought by the estate or the Unsecured Noteholders, I only analyze here whether the alternative claims of the Unsecured Noteholders would add any value to the estate's claims.

⁴¹ Even as to the breach of contract claim, it is worth noting that the Unsecured Noteholders' remedies as third-party beneficiaries are limited to specific enforcement of the provisions of the 2005 Operating Agreement. Examiner's Report, III-21-22.

⁴² See *St. Paul*, *supra*, 884 F.2d at 705-06 (holding that challenge to actions that allegedly reduced the fund from which debtor's debts would be paid was not a particularized harm allowing a claim to be brought outside of bankruptcy).

⁴³ See *In re The Bennett Funding Group, Inc.*, 336 F.3d 94, 102 (2d Cir. 2003).

Settlement Considerations:

As to the breach of contract claim, the Examiner concluded that the Unsecured Noteholders' breach of contract claims would be barred by the statutes of limitation. Because this would be a complete bar to the claim and easily established by AFI, the breach of contract claims by the Unsecured Noteholders do not add any settlement value to the estate's claims.

The third-party fraud claim faces a number of difficult hurdles. As a threshold matter, the Examiner considered whether such a claim was viable under both Minnesota law and New York law. The Examiner first concluded that it was not viable under Minnesota law because Minnesota does not recognize a fraud claim based on reliance by a third party. He also concluded that if the claim were brought in New York, the court would apply Minnesota law, which would bar the claim. Thus, if the fraud claim were brought in New York, it would fail and does not add any settlement value to the estate's claims.

The Examiner considered the possibility that New York law would apply if the Unsecured Noteholders could bring the fraud claim in Minnesota. For the reasons discussed above and in *St. Paul*,⁴⁴ I believe that it is unlikely that the court would allow the claim to be brought in Minnesota outside of the bankruptcy. This severely limits any settlement value to the claim. But even if the Unsecured Noteholders were allowed to bring this claim in Minnesota, the Examiner found that, although it is a close question, the fraud claim would more likely than not fail. The Examiner concluded that if the fraud claim were brought in Minnesota, New York law would apply. The Examiner found that it was unclear whether New York law would recognize a fraud claim based on reliance by a third party; the law supporting that theory had a "somewhat checkered" history and has been rejected by the Second Circuit. Moreover, even if the Unsecured Noteholders could get over that hurdle, they would still have to establish the remaining elements of a fraud claim. Together these factors render the third-party fraud claim of minimal settlement value, even if it were allowed to be brought outside the bankruptcy.

The Examiner also considered whether the statute of limitations would bar a fraud claim. Although the Examiner found it a close question, he concluded it was more likely than not that the statute of limitations would not bar the claim. Nonetheless, because this is a significant risk, and would completely bar the claim if AFI prevailed, it further detracts from the settlement value.

To gain a recovery on their third-party fraud claim, the Unsecured Noteholders would have to establish standing, obtain permission to bring the claim outside the bankruptcy, have New York law apply, have the court apply a questionable interpretation of New York law, establish the elements of a fraud claim, and defeat a statute of limitations argument. In light of these substantial hurdles, I do not believe that the third-party fraud claim by the Unsecured Noteholders adds materially to the settlement value of the estate's claims regarding the 2006 Bank Restructuring.

⁴⁴ 884 F.2d 688, 705-06 (2d Cir. 1989).

5. Junior Secured Noteholder Causes Of Action

Examiner's Report References:

Section I.H.5 pages I-43 to I-44

Section V.E pages V-350 to V-383

Description:

Whether ResCap and AFI breached the Secured Revolver Loan Agreement, the Junior Secured Notes Indenture, the Senior Secured Notes Indenture, or the Intercreditor Agreement by either: (1) entering into the Line of Credit Facilities; or (2) releasing the liens on certain assets securing the Secured Revolver Facility, the Junior Secured Notes, and the Senior Secured Notes, and having such assets secure the Line of Credit Facilities.

Background:

Due to persistent liquidity shortages, ResCap entered into a series of financing transactions between 2007 and 2010. In particular, in late 2008, facing liquidity shortfalls, two ResCap affiliates (PATI and RAHI) entered into the Initial Line of Credit Facility, with AFI as lender in the amount of \$430 million. ResCap guaranteed the Initial Line of Credit Facility on a full recourse basis. Although ResCap had attempted to find unaffiliated lenders for this transaction, it was unable to do so and AFI was the lender of last resort. In order to have collateral available to secure the Initial Line of Credit Facility, collateral had to be released from other credit facilities, *i.e.*, the Secured Revolver Facility, the Senior Secured Notes, and the Junior Secured Notes. In a typical case, this would have been an impediment to a new line of credit.

In June 2009, PATI and RAHI entered into a Second Line of Credit Facility with AFI for an additional \$370 million on substantially similar terms to the Initial Line of Credit Facility. Goldin Associates rendered a fairness opinion in connection with the Second Line of Credit Facility, finding it fair to ResCap and its creditors (other than AFI). In late 2009, the amount available under the Line of Credit Facilities was increased, and Goldin Associates again issued a favorable fairness opinion. Finally, in late 2009, the Line of Credit Facilities were combined into one agreement and the Secured Revolver Loan Agreement was amended and restated. Under the Amended and Restated Line of Credit Facility, RFC and GMAC Mortgage replaced PATI and RAHI as the borrowers.

Examiner's Analysis and Conclusions:

The Examiner concluded that the evidence does not support the allegations made by the Ad Hoc Group of Junior Secured Noteholders that either: (1) entering into the Line of Credit Facilities; or (2) releasing the liens on certain assets securing the Secured Revolver Facility, the Junior Secured Notes, and the Senior Secured Notes, and having such assets secure the Line of Credit Facilities, violated the terms of the Secured Revolver Loan Agreement, the Junior Secured Notes Indenture, the Senior Secured Notes Indenture, or the Intercreditor Agreement.

Review of Examiner's Analysis and Conclusion:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions.

Settlement Considerations:

The Examiner found that the evidence does not support the allegations of breach of the Secured Revolver Loan Agreement, the Junior Secured Notes Indenture, the Senior Secured Notes Indenture, or the Intercreditor Agreement. Accordingly, this claim is not assigned any settlement value.

**I. OPINION REGARDING CONSIDERATION FOR RELEASES AND
CONCLUSION REGARDING ALLOCATION OF SETTLEMENT FUND**

Examiner's Report:

Section I.I pages I-44

Section IX pages IX-1 to IX-28

Description:

In order to provide guidance to the parties, the Examiner reviewed the terminated AFI Settlement and Plan Sponsor Agreement to determine whether the Debtor Release and Third-Party Release would have been warranted based upon AFI's contributions.

A new settlement has been reached that is embodied in a Plan Support Agreement dated May 13, 2013 and provides for AFI to contribute \$2.1 billion in exchange for a broad release in a confirmed plan of reorganization. I opine on the reasonable allocation of that fund among the causes of action that have material settlement value.

Background:

The terminated AFI Settlement and Plan Sponsor Agreement proposed to settle all Estate Causes of Action and Third Party Claims against the AFI Released Parties in exchange for a cash contribution from AFI to the Debtor of \$750 million plus other non-cash contributions. No party in interest or creditor group, other than the RMBS Institutional Investors, supported the terminated AFI Settlement and Plan Support Agreement. Ultimately, the Debtor withdrew from the AFI Settlement and Plan Sponsor Agreement.

The Bankruptcy Court directed the parties to mediation before the Hon. James M. Peck, U.S. Bankruptcy Judge. When the Examiner was ready to release his report, the parties asked that it be delayed to afford them the opportunity to complete mediation. Following extensive marathon mediation sessions, on May 13, 2013 a Plan Support Agreement was reached among the Debtors, AFI, the Creditors Committee and certain Consenting Claimants. Under the Plan Support Agreement, AFI is to contribute \$2.1 billion to the Debtors in exchange for a broad release of the

AFI Released Parties upon confirmation of a plan of reorganization. On June 26, 2013, the Bankruptcy Court granted the Debtors' motion for approval to enter into the Plan Support Agreement.

Examiner's Analysis and Conclusions:

1. A court would consider the *Iridium* factors in deciding whether to approve the terminated AFI Settlement and Plan Sponsor Agreement.

2. Creditor support, a major consideration in the approval of settlements, was lacking.

3. It is extremely difficult to confirm a plan with a third-party release absent consent of substantially all of the third party claimants.

4. The evidence does not support ascribing significant value to AFI's non-cash contributions under the terminated AFI Settlement and Plan Sponsor Agreement.

5. The cash contribution of \$750 million and the non-cash contributions from AFI were inadequate to support a release of the Estate Causes of Action, let alone the Third Party Claims.

6. It is unlikely that a court would have approved the terminated AFI Settlement and Plan Sponsor Agreement.

Review of Examiner's Analysis and Conclusions:

After reviewing the facts and legal conclusions set forth in the Examiner's Report, I agree with the Examiner's analysis and conclusions. My opinion on the reasonable settlement value of each of the Estate Causes of Action, when added together, totals \$1,920.0 million and is consistent with the Examiner's conclusion that \$750 million was insufficient consideration to support releases of the Estate Causes of Action, let alone the Third Party Claims.

Conclusion:

In the following chart, I have compiled my assessment of the reasonable settlement value of each of the Estate Causes of Action and the Third Party Claims. In my opinion, the reasonable settlement value of Estate Causes of Action is \$1,920.0 million and the reasonable settlement value of the Third Party Claims is \$480 million. Although under the absolute priority rule, I could have allocated the settlement first to secured claims such as the JSNs, and second to unsecured claims, instead I made allocations pro rata based on the reasonable value of each of the claims. Because in determining the reasonable settlement amount of each claim I have taken into account the merits of the claim, the motivations of the parties to settle, the time and expenses associated with litigation and all of the other relevant factors relative to a reasonable settlement value, there is no reason to apply these factors again, and therefore, I have allocated the settlement fund of \$2.1 billion among the reasonable settlement values for each claim on a *pro rata* basis.

The \$2.1 billion settlement fund is smaller than my estimate of the reasonable settlement value of the claims done on a claim-by-claim basis, and it may be that in this instance the sum of the parts is greater than the whole. Also, the magnitude of the settlement fund that AFI has agreed to contribute, *i.e.*, \$2.1 billion, and the opportunity to resolve numerous claims at one time in the context of a bankruptcy, may warrant a discount. Overall I feel that my assessment of the reasonable settlement value of each individual claim, when combined and compared with the settlement fund of \$2.1 billion, is appropriate. I have allocated the settlement fund of \$2.1 billion among the reasonable settlement values.

<u>Claims</u>	<u>Potential Damages</u> <i>(in millions)</i>	<u>Reasonable Settlement Amount</u> <i>(in millions)⁴⁵</i>	<u>Percentage of Potential Damages</u>	<u>Allocation from \$2.1 billion AFI Settlement Fund</u> <i>(in millions)</i>	<u>Percentage of Potential Damages</u>
<u>ESTATE CAUSES OF ACTION</u>					
Breach of Contract for Misallocation of Net Revenues on Loans brokered by GMAC	\$520.5	\$268.2	51.5%	\$234.6	45.1%
Breach of Contract for Failure To Pay Value of Purchased MSRs	\$1,725.0	\$387.2	22.4%	\$338.8	19.6%
Breach of Representations and Warranties under 2001 and 2006 MMLPSAs	No Amount Given				
Breach of Contract Claims relating to Pipeline Swap	No Amount Given				

⁴⁵ Zeros are omitted for any settlement value that does not meet my threshold for materiality (\$21 million).

<u>Claims</u>	<u>Potential Damages</u> <i>(in millions)</i>	<u>Reasonable Settlement Amount</u> <i>(in millions)⁴⁵</i>	<u>Percentage of Potential Damages</u>	<u>Allocation from \$2.1 billion AFI Settlement Fund</u> <i>(in millions)</i>	<u>Percentage of Potential Damages</u>
Breach of 2005 Operating Agreement or 2006 Amended Operating Agreement in connection with MMLPSA, Pipeline Swap or MSR Swap	No Amount Given				
Preferential Transfer relating to DOJ/AG Consent Order	\$109.6	\$60.0	54.7%	\$52.5	47.9%
Preferential Transfer relating to 2012 Letter Agreement and A&R Servicing Agreement	\$48.4	\$32.0	66.1%	\$28.0	57.9%
Unauthorized Post- petition Transfer relating to Indemnification Obligations under A&R Servicing Agreement	\$12.9				
Breach of contract regarding the First 2009 Tax Allocation Agreement	\$1,770.0	\$713.7	40.3%	\$624.5	35.3%
Constructive Fraudulent Transfer relating to 2 nd 2009 Tax Allocation Agreement	\$50.0				
Contract Claim re 2005 Tax Allocation Agreement	\$15.1				

<u>Claims</u>	<u>Potential Damages</u> <i>(in millions)</i>	<u>Reasonable Settlement Amount</u> <i>(in millions)⁴⁵</i>	<u>Percentage of Potential Damages</u>	<u>Allocation from \$2.1 billion AFI Settlement Fund</u> <i>(in millions)</i>	<u>Percentage of Potential Damages</u>
Minnesota Insider Preference Claims	\$566.0	\$328.9	58.1%	\$287.8	50.8%
Fraud related to 2006 Bank Restructuring	\$569.0	\$130.0	22.8%	\$113.8	20.0%
Tortious Interference with Contract relating to 2006 Bank Restructuring	No Amount Given				
Fraudulent Transfer in connection with Ally Bank Transactions	No Amount Given				
Miscellaneous Breach of Fiduciary Duty Claims against ResCap's D&Os	No Amount Given				
Aiding and Abetting Breach of Fiduciary Duty against AFI (other than re 2006 Restructuring)	No Amount Given				
Single Entity theories of liability regarding AFI and ResCap and/or affiliates, including Piercing Corp Veil and Substantive Consolidation	No Amount Given				
Debt Re-characterization	No Amount Given				
Equitable Subordination and Disallowance	No Amount Given				

<u>Claims</u>	<u>Potential Damages</u> (in millions)	<u>Reasonable Settlement Amount</u> (in millions) ⁴⁵	<u>Percentage of Potential Damages</u>	<u>Allocation from \$2.1 billion AFI Settlement Fund</u> (in millions)	<u>Percentage of Potential Damages</u>
Constructive Trust	No Amount Given				
Constructive Fraudulent Transfer Against Cerberus relating to 2008 Model Home Sale	\$30.0				
Fraudulent Transfer relating to Prepetition Asset Sales (other than 2008 Model Home Sale)	No Amount Given				
Financing Affiliate Transactions					
<i>TOTAL</i>		<i>\$1,920.0</i>		<i>\$1,680.0</i>	
<u>THIRD PARTY CAUSES OF ACTION</u>					
Third Party Claims against AFI					
a. RMBS Claims, including veil- piercing, control person liability and aiding and abetting fraud	\$20,000.0	\$480.0	2.4%	\$420.0	2.1%

<u>Claims</u>	<u>Potential Damages</u> (in millions)	<u>Reasonable Settlement Amount</u> (in millions) ⁴⁵	<u>Percentage of Potential Damages</u>	<u>Allocation from \$2.1 billion AFI Settlement Fund</u> (in millions)	<u>Percentage of Potential Damages</u>
b. Fraudulent Transfer Claims for Payments of \$200 M and 25.5 M					
Third Party Claims against Ally Securities, including Fed and State Securities law, common law fraud, aiding and abetting fraud, and negligent misrepresentation					
Third Party Claims against Ally Bank					
Unsecured Noteholder Causes of Action, including tortious interference under 2005 Indenture and claims relating to the 2006 Bank Restructuring					
Junior Noteholder Causes of Action					
Total Third Party Claims		\$480.0		\$420.0	
GRAND TOTAL		\$2,400.0		\$2,100.0	

After reviewing each of the causes of action identified in the Examiner's Report, in my opinion the reasonable settlement value of the Estate Causes of Action is \$1,920.0 million and the reasonable settlement value of the Third Party Claims is \$480 million for a total reasonable settlement value of all claims and causes of action of \$2,400.0 million. In my opinion the settlement fund of \$2.1 billion to be paid by AFI should be allocated to the reasonable settlement value of each claim *pro rata*.

October 18, 2013

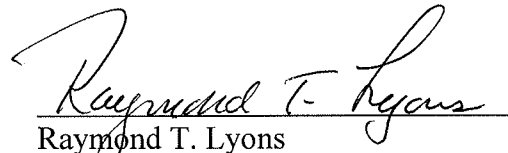

Raymond T. Lyons

EXHIBIT A

Documents Reviewed

1. *Report of Arthur J. Gonzales, as Examiner, released June 26, 2013*
2. **Documents**¹
 - (a) Implemented 2005 Tax Allocation Agreement
 - (b) Other 2005 Tax Allocation Agreement
 - (c) 2006 Tax Allocation Agreement
 - (d) First 2009 Tax Allocation Agreement
 - (e) Second 2009 Tax Allocation Agreement
 - (f) 2001 MMLPSA
 - (g) March 2008 Pipeline Swap Schedule
 - (h) July 2008 Pipeline Swap Schedule
 - (i) Amended and Restated Schedule to the 2002 ISDA Master Agreement dated April 1, 2011
 - (j) 2006 MMPLSA
 - (k) 2007 MMPLSA
 - (l) 2005 Operating Agreement
 - (m) 2008 MMPLSA
 - (n) 2010 Net Funding Schedule
 - (o) April 2011 MSR Swap Confirmation
 - (p) MSR Swap
 - (q) 2006 Amended Operating Agreement
 - (r) November 20, 2008 Broker Agreement
 - (s) First Priority Security Agreement
 - (t) Junior Notes Indenture
 - (u) Senior Secured Notes Indenture
 - (v) Intercreditor Agreement
 - (w) Initial Line of Credit Agreement
 - (x) Second Line of Credit Agreement
 - (y) A&R Line of Credit Agreement
 - (z) Ally Accounting Policy 3330 – Accounting for Income Taxes, effective October 1, 2010
 - (aa) FMV Schedule
 - (bb) Secured Revolver Loan Agreement

¹ Unless otherwise noted with an asterisk, the documents listed in this Exhibit are defined in the Appendix to the Examiner's Report.

3. **Reports Regarding Securities Settlements**

- a. ***The D&O Diary*** – Subprime and Credit Crisis-Related Lawsuits, Settlements, Dismissals and Denials – April 30, 2013 (Kevin LaCroix)
- b. ***NERA Economic Consulting*** – Recent Trends in Securities Class Action Litigation: 2012 Full-Year Review – January 29, 2013 (Dr. Renzo Comoli, Sukaina Klein, Dr. Roald I. Miller and Svetlana Starykh)
- c. ***Cornerstone Research (Economic and financial Consulting and Expert Testimony)*** – Securities Class Action Settlements - 2011 Review and Analysis

4. **Related Mortgage Backed Securities Settlements**

- a. ***In re Residential Capital, LLC, et al.*** (U.S. Bankruptcy Court, Southern District of New York, Case No. 12-12020 MG)
 - (1) Reply Declaration of Jeffrey A. Lipps (Docket No. 2805)
 - (2) Direct Testimony of Jeffrey A. Lipps (Docket No. 4433)
- b. ***In re Citigroup Inc. Securities Litigation.*** (U.S. District Court, Southern District of New York, Case No. 07:cv-09901)
 - (1) Order Preliminarily Approving Proposed Settlement and Providing for Notice dated August 29, 2012 (Docket No. 156)
 - (2) Final Judgment and Order of Dismissal With Prejudice dated August 1, 2013 (Docket No. 276); *also see b(1) below*
- c. ***In re Citigroup Inc. Securities Litigation.*** (U.S. District Court, Southern District of New York, Case No. 09 MD 2070)
 - (1) Opinion dated August 1, 2013 (Docket No. 275)
- d. ***In re Citigroup Inc. Bond Litigation.*** (U.S. District Court, Southern District of New York, Case No. 08-Civ. 9522)
 - (1) Final Opinion and Order dated August 20, 2013 (Docket No. 180)
- e. ***Maine State Retirement System, et al. v. Countrywide Financial Corporation.*** (U.S. District Court, Central District of California, Case No. 10-cv-00302); ***David H. Luther, et al. v. Countrywide Financial Corporation.*** (U.S. District Court, Central District of California, Case No. 12-cv-05125); ***Western Conference of Teamsters Pension Trust Fund, et al. v. Countrywide Financial***

Corporation, et al. (U.S. District Court, Central District of California, Case No. 12-cv-05122)

- (1) Order Granting Preliminary Approval to Settlement and Directing Dissemination of Notice to the Class
- (2) Notice of Pendency and Proposed Settlement of Class Actions, Fairness Hearing and Motion for an Award of Attorneys' Fees and Litigation Expenses

f. ***George Pappas, et al. and Countrywide Financial Corp., et al. v. The Bank of America 401(k) Plan for Legacy Companies as a Successor to the Countrywide Financial Corporation 401(k) Savings and Investment Plan.*** (United States Court of Appeals for the Ninth Circuit, Case No. 11-55570)

- (1) Mandate dated June 20, 2013 (Docket No. 1104)

g. ***Countrywide Financial Corporation Securities Litigation*** (U.S. District Court, Central District of California, Western Division Lead, Case No. CV 07-05295)

- (1) Notice of Pendency and Proposed Settlement of Class Action and Fairness Hearing

h. ***In re Washington Mutual Mortgage Backed Securities Litigation.*** (U.S. District Court, Western District of Washington, Case No. 09-cv-00037)

i. ***In re Washington Mutual, Inc. Securities Litigation.*** (US District Court for the Western District of Washington at Seattle, Case No. 2:08-md-1919 MJP, Lead Case No. C08-387-MJP)

- (1) Stipulation and Agreement of Settlement with Individual Officer and Director Defendants and with Washington Mutual, Inc. (Exhibit 1 to Docket No. 308)
- (2) Stipulation and Agreement of Settlement with the Underwriter Defendants (Exhibit 2 to Docket No. 308)
- (3) Stipulation and Agreement of Settlement with Defendant Deloitte & Touche LLP (Exhibit 3 to Docket No. 308)
- (4) [Proposed] Order Preliminarily Approving Proposed Settlements and Providing for Notice (Exhibit 3 to Docket No. 308)

j. ***United States of America, et al. v. Bank of America Corp., et al.*** (United States District Court for the District of Columbia, Case No. 12-0361)

- (1) Consent Judgment

(2) Earmark and Indemnification Agreement

k. Ally Financial Inc., Residential Capital, LLC and GMAC Mortgage LLC
(United States of America before the Board of Governors of the Federal Reserve System, Washington, D.C., Docket No. 12-006 CMP-HC & 12-006 CMP DEO)

(1) Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended

(2) January 30, 2012 letter re: Terms of Support Relating to Possible DOJ/State Attorneys' General Settlement

l. Ally Financial Bank Inc., Ally Bank, Residential Capital, LLC and GMAC Mortgage, LLC (United States of America before the Board of Governors of the Federal Reserve System, Washington, D.C. and Federal Deposit Insurance Corporation, Washington, D.C., Docket No. 11-020-B-HC and 11-020-B-DEO)

(1) Consent Order